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Meeting of the Maricopa County Air Poll

Hearing Board was taken on November 7, 2016, commencing  
1:05 p.m. at the offices of the Maricopa County Air  
Quality Department, 1001 North Central Avenue, Suite  
Phoenix, Arizona, before LAURA A. ASHBROOK, a Certified  
Reporter in the State of Arizona.

MARICOPA COUNTY AIR POLLUTION HEARING BOARD:  
SHANE LEONARD, Chairperson  
District 1

LUCAS NARDUCCI,  
District 2  
KIM McEACHERN,  
District 3

SINE KERR,  
District 4  
BRIAN DAVIDSON, Vice Chair  
District 5

ERIC HISER,  
Board Attorney

For the Petitioner Appellant:

DANIEL E. BLACKSON  
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Tonopah, Arizona 85354

For the Department of Air Quality:

ROBERT SWAN  
Deputy County Attorney  
222 North Central Avenue  
Suite 1100  
Phoenix, Arizona  
P R O C E E D I N G S

1  
2 CHAIRMAN LEONARD: Folks, I'd like to c  
3 this meeting of the Maricopa County Air Pollution Hea  
4 Board together. I'll note the start time as 1:05. A  
5 mentioned earlier, the first agenda item will be to m  
6 into executive session so we can get a little instruct  
7 from our folks. I appreciate your deference. Don't  
8 too far because we'll try and get back right about 1:

9 With that, I will entertain a motion t  
10 into executive session, please.

11 MR. NARDUCCI: Move to go into executiv  
12 session.

13 MS. KERR: Second.

14 CHAIRMAN LEONARD: All in favor?

15 (All members responded in the affirmati

16 CHAIRMAN LEONARD: Any opposed?

17 (There was no response.)

18 CHAIRMAN LEONARD: All right, folks. W  
19 going into executive session. Stay where you're at a  
20 we'll kick over into the other room.

21 (Recess taken, 1:07 p.m. to 1:41 p.m.)

22 CHAIRMAN LEONARD: Thank you very much  
23 your patience, folks. I'll entertain a motion to go  
24 into open session, please.

25 MR. NARDUCCI: So moved.

1 CHAIRMAN LEONARD: Second?

2 MR. DAVIDSON: Second.

3 CHAIRMAN LEONARD: All those in favor?

4 (All members responded in the affirmative.)

5 CHAIRMAN LEONARD: Any opposed?

6 (There was no response.)

7 CHAIRMAN LEONARD: All right. We are back  
8 in open session. Okay. Folks, again, thanks for your  
9 patience. We appreciate you giving the board an  
10 opportunity to kind of run through what we think our  
11 process rules are supposed to be today.

12 For purposes, however, of clarification  
13 know some folks in the audience may not have ever done  
14 this before. So what I'd like to do is have Mr. Hise  
15 kind of run you through the process we're going to go  
16 through today.

17 One of the things that I want to make sure  
18 point out is that the majority of today's hearing is  
19 to be between Mr. Blackson and the Department. We have  
20 at the end of the hearing, a place for public comment  
21 which is where I think some folks are going to want to  
22 talk, understanding though that that won't take place  
23 matter of the hearing.

24 So if you do have something you'd like  
25 say, certainly stay so we can get those comments. Thank you.

1 won't be a part of the actual hearing. That doesn't  
2 it won't be put into the meeting minutes, so it will  
3 there. I just want to make sure folks understand.

4 So for purposes of Mr. Blackson and pur  
5 of Mr. Swan and the Department, if Mr. Hiser you go a  
6 and walk us through what the process is going to be.  
7 way, everybody is on the same page, please.

8 MR. HISER: Thank you, Mr. Chairman. T  
9 is the second hearing in this matter. In the previou  
10 hearing, the Board had decided that the issues that w  
11 would be investigating today are the propriety of the  
12 procedures that were used in issuance of the minor pe  
13 revision and any issue going to the minor permit revi  
14 itself.

15 At this hearing, we will start with fiv  
16 minutes per side for opening arguments, that you can  
17 sort of a preview of your case you will be putting on  
18 We'll start with Mr. Blackson as the petitioner appell  
19 who will be followed by Mr. Swan responding on behalf  
20 the Department.

21 We will then go to the petitioner  
22 appellant's case which will be Mr. Blackson. He will  
23 be able to put on the testimony. We understand that  
24 will be testimony from himself as a witness and also  
25 an expert. Following each witness' testimony, there

1 be an opportunity for cross-examination by the other  
2 party.

3 After Mr. Blackson is finished with his  
4 case-in-chief and if he feels he wants to reserve time  
5 rebuttal, we may come back to rebuttal. Then we'll go  
6 Mr. Swan. Mr. Swan will be able to put on any witness  
7 that he chooses to do so. Mr. Blackson will have an  
8 opportunity to cross-examine those witnesses.

9 If there is a request for rebuttal, we'll  
10 then handle any rebuttal witness testimony that we need  
11 do so and then we will close with, say, ten minutes per  
12 party for the closing arguments, because you'll have  
13 little bit more to talk about because there will be  
14 evidence and stuff in the record at that point.

15 We would like to hold this hearing to  
16 close -- somewhere between the -- 4:30, around that time.  
17 So that's roughly about an hour and 20 minutes per party.  
18 We will also take a break in the middle of the day to  
19 allow people to go out and use the restroom or whatever.  
20 If you do need to break during the day, just please go  
21 and try not to make too much noise going through the  
22 doors.

23 I believe that is most of the information  
24 that we need to have. Just to clarify for the parties  
25 the Board has, once again, asked me to serve in the

1 capacity of the hearing examiner, so I may be asking  
2 questions for the purpose of expanding the record for  
3 Board's consideration as well.

4 Are there any questions from the parties?  
5 With that then, Mr. Chairman, I will turn it back over  
6 you to start the hearing.

7 CHAIRMAN LEONARD: Thank you very much.  
8 Just one reminder: We do have a court reporter in the  
9 room today so I would ask, as best you can, to kind of  
10 look over every once in a while; I will too, in case  
11 gets behind or her fingers start cramping or whatever  
12 be the case, just as a reminder, and then again, if  
13 something happens and you need some assistance, just  
14 me know.

15 So with that, Mr. Blackson, the floor is  
16 yours for opening statement, please.

17 MR. BLACKSON: Thank you. Chairman Leonard,  
18 and members of the Board, Maricopa County Air Quality  
19 Department alleges that the Department has not developed  
20 regulations addressing animal feeding operations emissions  
21 from the units covered in the EPA study for two main  
22 reasons: one the absence of reliable emissions factors  
23 and, two, the federal and state law limit the Department's  
24 authority to promulgate regulations regarding animal  
25 feeding operations emissions from units in the EPA study.



1 They also note that the Arizona Department of  
2 Environmental Quality has not adopted relevant  
3 regulations, and their second reason for not addressing  
4 is that emissions from the Tonopah Egg Ranch poultry  
5 operation are fugitive.

6 My pre-hearing disclosure refutes the  
7 Department's position that a new source review was not  
8 necessary to determine whether or not a Title V or  
9 non-Title V permit is appropriate for the Tonopah Egg  
10 Ranch operation from this day forward. I understand  
11 the underlying permit is not at issue, and what is at  
12 issue is whether a non-Title V permit is still appropriate  
13 or whether from this day forward, it should be a Title  
14 permit.

15 Our arguments demonstrate that the  
16 Department's decision was arbitrary, unreasonable,  
17 unlawful and the technical judgment was invalid, and  
18 that's what I need to demonstrate to you, according to  
19 your procedures, and I believe that I can do that. The  
20 Department's position on this permit action is at odds  
21 with their obligation under their EPA delegated authority  
22 and Clean Air Act responsibilities with respect to the Tonopah  
23 Egg Ranch permit action that we are here to discuss today.

24 The Department is intentionally limiting the  
25 scope of the minor permit modification review by ignoring

1 stationary sources that are at the facility which would  
2 demonstrate to have the potential to emit more than  
3 100 tons per year of new source review pollutants.

4 We will lay the regulatory foundation  
5 through the Department's rule showing that the Department  
6 has the ability to and the obligation to conduct a new source  
7 source review. We will show that there are published  
8 emission factors that can be used to calculate estimated  
9 emissions from poultry operations. We will show that there  
10 is no longer -- that there are no longer reasons to identify  
11 stationary sources of the Tonopah Egg Ranch.

12 We are also going to show today that the Department  
13 did not follow rules performing a new source review  
14 during the minor permit modification process. The  
15 Department intentionally limited their review process by  
16 ignoring stationary sources that have the potential to  
17 emit more than 100 tons per year of new source review  
18 pollutants. Department continues to ignore these  
19 stationary sources in an arbitrary, capricious way.

20 In August, the Board ruled on the  
21 jurisdiction of this hearing. As recent as Friday last  
22 week, the Department again made an effort to limit the  
23 scope of this hearing to emissions only from the diesel  
24 for the emergency generators and the boiler operation.  
25 I intend to provide testimony, including myself and experts.

1 witness, to demonstrate that a new source review with  
2 minor permit modification should have been done and t  
3 new source review pollutants quantified.

4 Expert witness Miss Martin will testify  
5 about emissions calculations permitting major station  
6 sources at the facility. We intend to challenge the  
7 Department's position on fugitive emissions and  
8 demonstrate that the emissions are non-fugitive.

9 I can only use the plain language of th  
10 Clean Air Act of Maricopa County state implementation  
11 air quality rules and that will be the basis of my  
12 argument. Although I've been able to find some legal  
13 cases on the internet that support my appeal, I don't  
14 the skills or the ability to find, cite or weave cour  
15 cases into the legal argument.

16 However, I would like to make a stateme  
17 about the Chevron USA, Incorporated versus Natural  
18 Resources Defense Council. That was a Supreme Court  
19 It seems to me that the laws, regulations and rules a  
20 clear, and interpretation is not necessary. Therefor  
21 the Chevron decision would not apply.

22 I hope by the end of the day you will a  
23 with us that a new source review should have been  
24 triggered during the minor permit modification proces  
25 Thank you.

1 CHAIRMAN LEONARD: Thank you. Mr. Black  
2 Mr. Swan.

3 MR. SWAN: Mr. Chairman, members of the  
4 Board, in the Department's view -- in the Department's  
5 view, this is a very simple case that involves an  
6 application for a minor permit revision to add boiler  
7 generators to an existing operation that already had  
8 granted an air quality permit. So, again, we're looking  
9 at an application for a minor permit revision to an  
10 existing permit.

11 The Board's own manual at Section 3.22  
12 states that under these circumstances, the petitioner  
13 certainly has the right to challenge the Department  
14 directors' action in approving that minor permit revision,  
15 but the petitioner has the high burden to prove that  
16 doing so, the Department's decision to issue the revision  
17 falls into at least one of the following four categories:  
18 It was arbitrary; it was unreasonable; it was unlawful;  
19 it was based upon a technical judgment that was clearly  
20 invalid, and the petitioner must -- you must find that one  
21 of those four categories of omissions is applicable here.  
22 It's our argument that you must find that in order to  
23 overturn and not confirm the Department directors'  
24 decision to issue the permit.

25 Here, the Department's decision to issue the permit is

1 minor permit revision should be confirmed under all of  
2 those. We met all of those standards and others. The  
3 evidence we will present will confirm that the Department  
4 applied all proper permitting standards and processes.

5 At the conclusion of the evidence, the  
6 Department will ask the Board to approve the Department's  
7 decision to issue the minor permit modification. Thank you,  
8 you.

9 CHAIRMAN LEONARD: Thank you, Mr. Swan.  
10 right. Mr. Blackson, however, you would like to proceed  
11 whether it's you first or you'd like your expert to  
12 to proceed.

13 MR. BLACKSON: What I would like to do  
14 is Mr. Swan and I agreed that all of the exhibits that  
15 have been provided in both of our pre-hearing disclosures  
16 be accepted by the Board as exhibits. So I would like to  
17 make that motion.

18 CHAIRMAN LEONARD: Mr. Swan, are you okay with that?  
19 with that?

20 MR. SWAN: The Department agrees, yes.

21 CHAIRMAN LEONARD: Thank you, gentlemen.  
22 doing that. We appreciate that. So we'll note that for  
23 the record, and thank you.

24 Mr. Hiser, I apologize. Sometimes I can be  
25 a little too informal. We need to admit those as part of the

1 the hearing. We will admit those.

2 MR. BLACKSON: With that, I would also  
3 to make a motion to submit some regulatory rules for  
4 board to consider also. We've talked -- and it's the  
5 understanding that the old version of the county rule  
6 have been used to review this permit. So with that,  
7 would move that Maricopa County Rules 100, 200, 220,  
8 and if, Mr. Swan would agree, also 41 CFR 165 which I  
9 believe the county has referenced as a legal citation

10 MR. SWAN: We have no problem with any  
11 those being admitted.

12 MR. HISER: I'd just like to clarify wh  
13 these are the current rules or these are historic rul

14 MR. BLACKSON: My understanding -- I ha  
15 both, but my understanding is they are the historic r

16 MR. HISER: Historic begs the question  
17 effective as of what date, just so I know what rules  
18 talking about?

19 MR. SWAN: I understand from my colleag  
20 Mr. Sumner, who is head of the permitting division, t  
21 all four of those rules were updated effectively --  
22 effective as of February 2016.

23 MR. HISER: Okay. So these would be th  
24 rules in effect in the 2014 time fame as previewed pr  
25 to the revision of Rule 16. Thank you.

1 MR. BLACKSON: I do have copies.

2 MR. HISER: Copies would be appreciated  
3 Most certainly that was going to be my next question,  
4 if you had copies. And just for the record, the CFR  
5 reference would be 40 CFR part 51.165.

6 MR. SWAN: In lieu of the citation he g

7 MR. HISER: That's the one I think he  
8 intended but he transposed a couple of numbers.

9 MR. BLACKSON: I did. I apologize.

10 CHAIRMAN LEONARD: Okay. If both parti  
11 are in agreement, I will accept those as submitted.

12 MR. BLACKSON: Okay. I haven't done th  
13 before, but I would like to be able to present the ca  
14 So I would call myself as a witness. Is that proper?

15 MR. HISER: So, Mr. Blackson, if you wi  
16 raise your right arm.

17 DANIEL E. BLACKSON,  
18 a witness herein, having been first duly sworn by the  
19 Certified Reporter to speak the truth and nothing but  
20 truth, was examined and testified as follows:

21 MR. HISER: Thank you. You may proceed

22 CHAIRMAN LEONARD: Also, so that we hav  
23 point of focus, if you need to get back up and get yo  
24 information, that's fine, but, again, because of the  
25 reporter, if you can make sure every once in a while

1 take a breath. You and I will be doing this together  
2 just let me know if something comes up that seems a l  
3 funny, all right? Thank you, sir.

4 MR. HISER: And for the benefit of the  
5 reporter, if you could start by stating your name and  
6 spelling it and your address.

7 MR. BLACKSON: My name is Daniel E.  
8 Blackson. D-A-N-I-E-L, E. B-L-A-C-K-S-O-N. My addr  
9 is 42211 West Salome Highway, Tonopah, Arizona, 85354

10 So I have some new information that I w  
11 like to add, and I have not done this before, so if I  
12 drift out of the bounds, please let me know, but I wo  
13 like to talk about about the rule process some and al  
14 the core of this, our fugitive, non-fugitive emission  
15 and I would like to be able to state a position on th

16 So if we could start with Rule 100, I  
17 believe there's some important definitions in Rule 10  
18 So we'll have the whole version and I would first lik  
19 point out the definition of a building and I'm turnin  
20 the -- it's in alphabetical order and it can be found  
21 page 12, and I think this definition will be importan  
22 we talk about fugitive and non-fugitive emissions.

23 So 200.26, , "Building, Structure, Facil  
24 and Installation. All the pollutant emitting equipme  
25 and activities that belong to the same industry group



1 that are located on one or more contiguous or adjacent  
2 properties and that are under the control of the same  
3 person or persons under common control except the  
4 activities of any vessel. Pollutant-emitting activities  
5 shall be considered as part of the industrial grouping  
6 they belong to the same major group as described in the  
7 Standard Industrial Classification Manual, 1987."

8 I would also like to read the fugitive  
9 emissions definition. Again, it's alphabetical and it  
10 would be found on page 17.

11 "Fugitive emission. Any emission which  
12 could not reasonably pass through a stack, chimney, vent  
13 or other functionally equivalent opening."

14 And then there's also a definition for  
15 source, and that's number 60 on page 19. "A major source  
16 as defined in Rule 240, permits for new major sources  
17 modifications to existing major sources of these rules."

18 B talks about hazards, air pollutants which  
19 be relevant to this, but C goes on to say at the bottom  
20 the page, "A major stationary source, as defined in  
21 Section 302, definitions of the act, that directly emits  
22 or has the potential to emit 100 tons per year or more  
23 any air pollutant, including any major source of fugitive  
24 emissions of any such pollutant."

25 And I would like to stop at this point

1 make a statement that that's fugitive emissions here  
2 have to be quantified, so somewhere in the process, e  
3 if the emissions from the hen houses are fugitive, th  
4 should have at least been calculated to determine whe  
5 this is a major source or major stationary source.

6 "The fugitive emissions of a stationary  
7 source shall not be considered in determining whether  
8 a major stationary source for the purpose of  
9 Section 302(j) of the act unless the source belongs t  
10 of the following categories," and then this is the li  
11 categorical stationary sources that are found in the  
12 I don't think there is a need to read through those.

13 There's an important definition  
14 on quantifiable at the bottom of page 24. "Quantifia  
15 With respect to emissions, including the emissions  
16 involved in equivalent emission limits and emission  
17 trades, capable of being measured or otherwise determ  
18 in terms of quantity and assessed in terms of charact  
19 Quantification may be based on emission factors, stac  
20 tests, monitored values, operating rates and averagin  
21 times, materials used in a process or production, mod  
22 or other reasonable measurement practices."

23 So I believe what this is saying is tha  
24 emissions can be quantified and you're not limited to  
25 using AP-42 in order to quantify those emissions.

1 I believe we'll be talking about source  
2 that definition is worth going through. Source is on  
3 page 28 at the very bottom. "Source: Any building,  
4 structure, facility or installation that may cause or  
5 contribute to air pollution."

6 And then with that, there's also a  
7 definition of a stationary source. This is on page 2  
8 "Any source that operates at a fixed location and tha  
9 emits or generates regulated air pollutants."

10 So I would like to say that the Clean A  
11 Act does not have an exemption for animal feeding  
12 operations, and also, when you look at the county rul  
13 rules 200, 210, 220, 240, 241, they describe the  
14 permitting process of all sources. Those rules do no  
15 have an exemption for animal feeding operations. In  
16 if you look at Rule 100, it does not even have a  
17 definition of an animal feeding operation.

18 Part of my appeal was issues with the p  
19 application for boilers and the source of fuel from  
20 boilers. That got sorted out eventually through an e  
21 note from Robert Palin to the Department on May 10th,  
22 and I would like to motion to enter that record -- to  
23 that record an exhibit.

24 CHAIRMAN LEONARD: Mr. Swan?

25 MR. SWAN: I think it's already deemed

1 admitted so --

2 MR. BLACKSON: Oh, it was?

3 MR. SWAN: Was it in the disclosure? I  
4 assuming it was.

5 CHAIRMAN LEONARD: Actually, I was going  
6 to -- I'm pretty sure we saw that as a part of your  
7 submittal. If it was something different than that,  
8 then --

9 MR. BLACKSON: No, it's not. I apologize.  
10 I just didn't know everything would be accepted.

11 CHAIRMAN LEONARD: No apologies necessary.  
12 You're good. Thank you.

13 MR. BLACKSON: Do we have a copy of that  
14 that I can read from?

15 It's Exhibit 33. So in this e-mail there  
16 a question asked about boilers and the source of fuel  
17 I'm sorry -- about the boilers and the existence of a  
18 propane tank, and Mr. Fallon or Falin, maybe is how he  
19 said his name, came back and responded that there are  
20 propane tanks on-site, each of them a thousand gallons  
21 that fuel the boilers themselves. That resolved that  
22 issue and the tanks were declared to be insignificant  
23 that resolved the issue.

24 But as I looked through the records, what  
25 saw is that on the technical support document, it

1 actually -- the final one was actually dated as prepared  
2 November 30th, electronically signed on February 17th.  
3 I am puzzled here how you can receive information in  
4 and it get recorded in a document that you have considered  
5 to be final in February. So I'm a little bit -- I guess the  
6 question how the county can do that, and that goes back to  
7 is this type of thing arbitrary? Maybe there's no testimony  
8 there that's not been provided that's dated differently  
9 is that an illegal type thing?

10 I know as environmental manager and  
11 operations manager, if we were to do records required by a  
12 permit or a regulation, if this activity happened, if the  
13 truly is what happened, that would be pretty egregious. I  
14 that person might even get terminated back-dating some  
15 information into an official record. So I -- so I  
16 would -- if there's something more current than that, I  
17 would really appreciate if the county would volunteer  
18 up, and it does go back to the processing of the  
19 application and how that's being handled.

20 And then I also came across another concern  
21 regarding the processing of the permit and -- well, I  
22 back up. I kind of got ahead of myself.

23 So the hen houses, I believe, from what I  
24 read here are definitely stationary sources and they  
25 emit regulated air pollutants that would be PM-10, PM-2.5,

1 and VOC's. The process waste water surface impoundme  
2 ponds are stationary sources also, and in the TSD, th  
3 Department called them structural. I'll mention now  
4 I believe that there's also VOC emissions from that,  
5 we will talk about that in a little bit.

6 I would also mention that the definitio  
7 stationary sources also found in 40 CFR 51.165, it re  
8 reads the same as what the county has but it's a litt  
9 bit updated. "Stationary source means any building,  
10 structure, facility, installation which emits or may  
11 a regulated pollutant, and the regulated -- the PM-10  
12 PM-2.5 and the volatile organic compounds are resourc  
13 review pollutants."

14 Also in the Code of Federal Regulation,  
15 does give a definition of building structure -- of a  
16 building, structure, facility and installation, and t  
17 definition reads, "Building, structure, facility,  
18 installation means all of the pollutant-emitting  
19 activities as it belongs to the same industrial group  
20 are located at one or more contiguous or adjacent  
21 properties and are under the control of the same pers  
22 persons under common control, except the activities o  
23 vessel pollutant emitting activities, shall be consid  
24 as part of the same industrial grouping; they belong  
25 the same major group, for example, which have the sam

1 digit codes as described in the standard industrial  
2 classification manual," and then it goes on to kind of  
3 how that was amended. So, again, the hen houses are  
4 buildings and the process waste water surface impoundment  
5 are structures and the TSD does recognize them as  
6 structures.

7 The regulated air pollutants from these  
8 sources have not been quantified. If you look at the  
9 permit application, that applicant left section Z-M part  
10 of the minor permit modification application blank but  
11 they do appear on the TSD calculations, and I guess I  
12 could stop at this point if we want to actually look at  
13 those documents.

14 CHAIRMAN LEONARD: Mr. Blackson, if you  
15 like us to, we can review that if you want. If not,  
16 just, as a reminder, we have all the information as you  
17 submitted and we've accepted it into record. If you're  
18 saying you'd like to point that out, that's just fine.

19 MR. BLACKSON: Thank you. Regarding the  
20 waste water ponds, in the TSD, the ponds are mentioned  
21 that's on page seven in the comments and it states not  
22 the chemicals containing VOC or HAPs but there's evidence  
23 in the ADAQ determination of applicability of other  
24 chemicals used in that building, and those chemicals,  
25 other than egg washing, do contain VOC's such as chemical

1 to clean the floor and probably the walls, and, also,  
2 TSD was not comprehensive in its analysis and it didn't  
3 look at feces and urine, broken egg matter that would  
4 on those eggs. That's why they're being washed. So  
5 of that matter then would be carried with it through  
6 wash water into these ponds and, of course, the biological  
7 activity still continues in those ponds.

8           There's also a matter with the actual permit  
9 application itself, and there actually may be a third  
10 application that predates the two that we have, and I  
11 would like to try and clear that up if possible. And  
12 going through my records request, there was an e-mail  
13 between the permitting supervisor and I believe the  
14 permitting engineer that indicated that the original  
15 permit application did not have the boilers. So I would  
16 move to include -- and you have not seen this -- include  
17 that e-mail and the attachment into the record as an  
18 exhibit.

19           MR. HISER: Mr. Swan, was that included  
20 what you were knowing you were admitting?

21           MR. SWAN: Did Mr. Blackson disclose it?

22           MR. BLACKSON: I did not because I did not  
23 find it until Saturday night.

24           MR. HISER: Then Mr. Blackson you will  
25 to present a copy of that to Mr. Swan.



1 MR. SWAN: We'll need to review it. I  
2 assuming it was part of your disclosure statement. The  
3 Department does not object to the admission of this  
4 document. It's a little unclear. There's green, red  
5 blue.

6 CHAIRMAN LEONARD: For the court report  
7 benefit, Mr. Swan was asking if Mr. Blackson might  
8 describe what the different colors in the proposed e-  
9 exhibit mean.

10 MR. BLACKSON: Yes. If you look at the  
11 e-mail, the cover e-mail on the document, that explain  
12 what the colors are. So there could be an explanation.  
13 It just looks like there was another application.

14 MR. SWAN: Again, the Department does not  
15 object to introduction of this piece of evidence, although  
16 we want to make it clear that the various colors were  
17 applied by the Department. I assume they were applied  
18 Mr. Blackson or somebody on his team. You found them  
19 way?

20 MR. BLACKSON: Yes. If you look at the  
21 e-mail, embedded in the e-mail it says, "Todd, the  
22 attached document has been revised per your  
23 input/suggestion (in red)."

24 MR. SWAN: Okay.

25 MR. BLACKSON: Revised sections --

1 MR. SWAN: Okay. We're satisfied.

2 CHAIRMAN LEONARD: Okay. We'll introduce  
3 that. Sorry. I'm used to being on your side of the  
4 table. My apologies. We'll admit that, please.

5 MR. BLACKSON: And I would like to make  
6 point then that goes back to the Department's actions  
7 you know, was that arbitrary? What about the technical  
8 decision on that? Where is that other -- that other  
9 application? And hopefully, it has not been swept away  
10 somewhere where it can't be found, because I think an  
11 important point on that is that a similar facility  
12 received the notice of violation, but the Department  
13 not to issue a violation to the Tonopah Egg Ranch for  
14 same issue of operating boilers without permits.

15 What I would like to do now is just bring  
16 mention the non-Title V permit -- minor permit  
17 modification process. So if you look at Rule 220, there  
18 is a section in this rule -- and I apologize. I really  
19 had gone through the revised rules to do this testimony  
20 and not so much the older rules. I believe it will be  
21 section 405, permit revision procedures and then if you  
22 on to 405.3, non-minor permit revisions is kind of what  
23 we're talking about and that's on page 21. So I  
24 apologize. This was not a non-minor; this was a minor  
25 permit revision.

1                   On page 20 and the section 405.2, minor  
2 permit revisions. "Minor permit revision procedures  
3 used for a change that triggers a new applicable  
4 requirement", and then it has steps one, two, three and  
5 then, "Minor permit revision procedures shall be used  
6 a change that increases operating hours or rates of  
7 production", and, "The minor permit revision procedures  
8 shall be used for a change in fuel."

9                   So on to the next page then, it continues  
10 explain the procedures that will be used for a change  
11 results in emissions subject to monitoring, record  
12 keeping. "E. Minor permit revision procedures shall  
13 used for a change that decreases emissions. Minor permit  
14 revision procedures shall be used for a change that  
15 replaces an item -- " but also complementing this is  
16 Rule 200, permit requirements. So Rule 220 has some  
17 specifics and Rule 200 also talks about the change.

18                   I believe actually I got a little confused  
19 with the different rules so the numbering is -- caused  
20 a little bit of a problem here, but I think I want to  
21 back to Rule 220, section 300 and if you look on  
22 page four, it's got the permit application processing  
23 procedures, and in these procedures, there is a standard  
24 application form and required information, 301.1. Section  
25 step, permit application, and a compliance plan; that

1 would be on page five, a timely permit application al  
2 and duty to supplement or correct application, action  
3 application and then that's the process the agency  
4 follows.

5 I would like to point out a couple of  
6 particular steps, and on page six, on 301.4, step C,  
7 kind of towards the top, "To be complete, an applicat  
8 for a new permit or a notification of a permit revisi  
9 shall contain an assessment of the applicability of t  
10 requirements established under rule --" let's go to E  
11 right above it, very top page. "To be complete, an  
12 application for a new permit or a notification of a p  
13 revision shall contain an assessment of the applicabi  
14 of the requirements of Rule 241, permits for new sour  
15 and modifications to existing sources of these rules  
16 shall comply with all applicable requirements of Rule  
17 permits for new sources and modifications to existing  
18 sources of these rules."

19 Now, through my records request, that  
20 assessment has not been provided. However, if you lo  
21 down, the control officer has a lot of leeway on mino  
22 permit modifications, and if we go on down to F, "The  
23 completeness determination shall not apply to revisio  
24 processed through the minor permit revision process."

25 So it would be, I think, pretty arbitra

1 not to require the assessment of Rule 241 and weigh t  
2 requirement and allow the minor permit modification t  
3 processed. Maybe, maybe not the control officer has  
4 ability to do that. I would hope no; it's pretty  
5 important, but if we look at the -- there's a checkli  
6 that is done on minor permit modifications, and that  
7 actually is part of the exhibit that the county has  
8 provided at the end of the TSD, and on that checklist  
9 does not talk about an assessment of the applicabilit  
10 the requirements of Rule 241, permits for new sources  
11 modifications to existing sources. So as near as I c  
12 determine from trying to follow this process, that  
13 assessment has not been done.

14 If we then go to Rule 200, it talks abo  
15 standards for applications, and this is on page nine.  
16 "All permit applications shall be filed in the manner  
17 form prescribed by the control officer. The applicat  
18 shall contain all the information necessary to enable  
19 control officer to make the determination to grant or  
20 deny a permit or permit revision which shall contain  
21 terms and conditions as the control officer deems  
22 necessary to assure a source's compliance with the  
23 requirements of these rules. The issuance of any per  
24 or permit revision shall not relieve the owner or ope  
25 from compliance with any federal laws, Arizona laws o

1 these rules, nor does any other law, regulation or pe  
2 relieve the owner or operator from obtaining a permit  
3 permit revision required under these rules."

4 Again, it does not -- there is no exemp  
5 for animal feeding operations. So the rules are very  
6 specific, and hopefully the county would have followe  
7 these rules that the hen houses are stationary source  
8 should be permitted as such or at least appear on the  
9 application as a stationary source for the county's  
10 valuation.

11 MR. HISER: Although, Mr. Blackson, if  
12 look at the paragraph above that, you will see that t  
13 is a section entitled exemptions that says,  
14 "Notwithstanding these rules, the following sources s  
15 not require a permit unless the source is a major sou  
16 or unless operation without a permit would result in  
17 violation of the act", and then under Section 308.3,  
18 says, "Agricultural equipment used in normal farm  
19 operations, for the purposes of this rule, does not  
20 include equipment that will be classified as a source  
21 would require a permit under Title V of the act or wo  
22 be subject to a standard under 40 CFR parts 60 or 61.

23 Do you agree?

24 MR. BLACKSON: It does say that; I agree  
25 but --

1 MR. HISER: So is it then -- are you go  
2 to be demonstrating to the Board then this is a facil  
3 that you believe should be classified as a major sour  
4 under Title V of the act?

5 MR. BLACKSON: I believe I'm restricted  
6 talk about the minor permit modification.

7 MR. HISER: But the minor permit revisi  
8 at a source that would or would not be subject to Tit  
9 I guess that's my question.

10 MR. BLACKSON: I believe in my pre-hear  
11 disclosure with my calculations, I demonstrated that,  
12 I believe that our expert will also demonstrate that,  
13 I would like to point out that this says agricultural  
14 equipment, not agricultural stationary sources.

15 MR. HISER: So your testimony is there  
16 difference between equipment and stationary sources?

17 MR. BLACKSON: Yes, there is a differen  
18 For example, agricultural equipment could be a tractor  
19 and I believe there's some references in Arizona Revi  
20 Statutes that do talk about that.

21 MR. HISER: Just in the interest of your  
22 management, you're about halfway through your allotte  
23 hour and a half.

24 MR. BLACKSON: Then I think what I'll d  
25 I will skip ahead, and I do have more to say, but I w

1 like to talk about the fugitive, non-fugitive. And I  
2 would also ask for the Board's indulgence. This is a  
3 pretty important issue and setting a time element on  
4 may be difficult. You may not get all the information  
5 that you really need to make a decision at the end of  
6 day.

7               So fugitive, non-fugitive does seem to  
8 the heart of this and there is a definition that we w  
9 find in the 40 CFR or the county rules. "Fugitive  
10 emissions means those emissions which could not reason  
11 pass through a stack, chimney vent or other functional  
12 equivalent opening."

13              Well, the hen houses which are stationa  
14 sources does have an opening. It is a building. It'  
15 a roof; it's got three sides and one side to the east  
16 open and they have actually reduced that opening a li  
17 bit by putting some fabric up there, so that opening  
18 vent. So all of the emissions coming out of that bui  
19 are passing through a vent or if you think maybe that  
20 opening is too large for some reason to call it a ven  
21 but it's a vent, how much would you shrink it down to  
22 arbitrary definition of what a vent is or what a vent  
23 isn't? But, of course, you can always go back and sa  
24 that that opening in that building, large or small, i  
25 functionally equivalent opening and it exhausts new s



1 review regulated pollutants from that building.

2 So since NSR pollutants pass through a  
3 into the ambient atmosphere, that causes those emissions  
4 to be non-fugitive, and I believe that the EPA has  
5 actually even taken a position on that.

6 If we look at the Buckeye Farms egg-laying  
7 poultry operations, the EPA clearly considered those  
8 houses to be a building and a vent when they issued the  
9 consent agreement to Buckeye Farms.

10 I would also like to touch base quickly  
11 about ARS 49.457 and this talks about best management  
12 practices, and there is a definition of a regulated area  
13 in there at the very bottom of the statute and it does  
14 talk about a regulated area has to be an area A or it  
15 to be in a non-attainment area, and I would like to  
16 introduce an e-mail that the permitting supervisor already  
17 agreed that the Tonopah facility is not in the regulated  
18 area and he had a map on that e-mail note. It may not be  
19 attached, but for the sake of time, I think I'll just  
20 forward, and if you're not in a regulated area, then you  
21 don't have a regulated agriculture activity.

22 MR. SWAN: Is that document included as an  
23 attachment to your disclosure statement or are we reading  
24 it for the first time? What is the answer?

25 MR. BLACKSON: The answer is the map be

1 showing PM-10 non-attainment area. Tonopah facility  
2 outside these areas and therefore does not appear to  
3 qualify for coverage under Ag BMP. I've been support  
4 that position. I believe it's very clear in the  
5 regulations if the legislature wanted the BMP's to be  
6 statewide, they would not have defined the area as su  
7 the regulated area.

8 CHAIRMAN LEONARD: Mr. Blackson, I'm so  
9 to interrupt. It won't detract from your time. The  
10 question I think was whether the e-mail you're discuss  
11 was something that was included in the initial submit  
12 or if this is new, like the previous e-mail was?

13 MR. BLACKSON: I'm sorry. It is new and  
14 would like to motion to -- oh, I'm sorry it was. It  
15 but just to make sure, I would like to pass it out.

16 MR. SWAN: We have no objection to the  
17 introduction of that evidence.

18 CHAIRMAN LEONARD: The e-mail will be  
19 admitted then.

20 MR. BLACKSON: With that, I think it wo  
21 be best to conclude my testimony.

22 CHAIRMAN LEONARD: Mr. Swan, do you hav  
23 questions of Mr. Blackson?

24 MR. SWAN: I have none, sir.

25 CHAIRMAN LEONARD: All right.

1 MR. BLACKSON: Thank you.

2 CHAIRMAN LEONARD: Mr. Blackson, are you  
3 calling another witness?

4 MR. BLACKSON: Yes, I would like to, yes.  
5 I would like to call a witness, Kathy Martin, to be a  
6 technical witness. I would -- there's some information  
7 I have about her previous testimony and deposition history  
8 and a resume type of information to validate that she is  
9 an expert witness.

10 MR. HISER: Mr. Swan, do you have any  
11 objection if this witness is an expert?

12 MR. SWAN: No, I do not.

13 MR. HISER: Miss Martin, if you'll take the  
14 witness stand.

15 MR. HISER: Miss Martin, I'd ask you to state  
16 your name, please, for the record.

17 THE WITNESS: My name is Kathy Jean Martin.  
18 K-A-T-H-Y, J-E-A-N, M-A-R-T-I-N.

19 MR. HISER: Miss Martin

20 KATHY JEAN MARTIN,  
21 a witness herein, having been first duly sworn by the  
22 Certified Reporter to speak the truth and nothing but  
23 truth, was examined and testified as follows:  
24  
25

EXAMINATION

BY MR. BLACKSON:

Q. Miss Martin, are you familiar with the matter before the Board today?

A. Yes.

Q. And could you describe how you prepared today to testify?

A. Clearly, you have almost a half a foot of information in front of you. I have been working with Blackson off and on getting prepared for this hearing today, and so I have read the Maricopa County regulations, the rules, right, 100, 200, such that you've been looking at already, some of the applicable Clean Air Act requirements under the 40 CFR, as you have incorporated them by reference in your own rules.

I have looked at some filings by the Maricopa County Board with respect to non-attainment ozone, some of the history of whether or not you've had attainment for eight-hour ozone, how you lost it and you're in a moderate attainment zone, for kind of getting a feel for what's going on in this particular part of the country.

I have read the materials and e-mails and copies of permits, permit application, management plan, the aquifer protection plan, et cetera, all related to

1 Hickman Tonopah egg laying facility that Mr. Blackson  
2 acquired through a public information request, and he  
3 forwarded a lot of those documents on to me for review.

4 I've looked at the pre-hearing disclosure  
5 statements by both Mr. Blackson and by the county and  
6 exhibits in the books. I have looked at some of the  
7 preliminary jurisdiction things and stuff like that,  
8 hopefully, almost that entire stack that you have in  
9 of you as well, in order to be here today, that relates  
10 this particular place, and then, of course, I did some  
11 outside research just on air quality and egg laying  
12 facilities that is the -- a lot of the research that  
13 been done through the EPA, the National Ambient Air  
14 Quality Emission Compliance Program, the NAEMS program.

15 I also -- because I've been working on  
16 issues since 1997, I have actually been following  
17 emissions and studies for I think it's almost 20 years  
18 21 years in all parts of the country. I've worked in  
19 states in the United States with respect to CAFO issues.  
20 So I'm also familiar with quality issues with respect to  
21 CAFO's, including egg layers, and I've been involved in  
22 some litigation on egg-laying facilities in California.

23 So I am aware of what some of your  
24 neighboring air quality divisions are doing with respect  
25 to air permits for egg-laying facilities and looking

1 the peer-reviewed or at least the published research  
2 has come out on various egg-laying facilities in Indi  
3 Iowa, Ohio.

4 Q. And have you visited the Tonopah Egg Ranch?

5 A. Yes, I have. I've been around it twice.

6 Q. And did you identify any -- what stationary  
7 sources have you identified from that visit, from your  
8 review?

9 A. Right. Just to be clear when -- even though  
10 have my CV, very quickly, I worked for the State of  
11 Oklahoma in the small business assistance program relat  
12 to the Clean Air Act amendments, and so in my tenure  
13 the Oklahoma Department of Environmental Quality, I  
14 received training on the Clean Air Act Title V permit  
15 writers training program. Also, they have a -- had  
16 various training programs through the University of T  
17 at Arlington on identifying stationary sources, and t  
18 also, on each type of best available control technolo  
19 such as bag houses, wet scrubbers, dry scrubbers, how  
20 do stack testing, et cetera, and that was all part of  
21 job working in the small business assistance program,  
22 helping both small business and larger companies in  
23 Oklahoma understanding the requirements under the Clea  
24 Air Act amendment of 1990. So that was actually my j  
25 for three years in Oklahoma.

1                   And so from that, I'm going to say that  
2 identified some stationary sources. I just wanted to  
3 you know it just didn't come out of nowhere. It came  
4 some background and work knowledge.

5                   So when you're looking at a facility, y  
6 going to identify all the sources, and then once you'  
7 identified the sources, try to see what their potenti  
8 emit is, whether they're operating 24/7, whether they  
9 some sort of synthetic bottleneck where you only have  
10 shift versus three shifts, et cetera, and you get all  
11 that lined out and start trying to estimate emissions  
12 whatever actual data or emission factors or whatever.  
13 then you have a full picture of what we're calling an  
14 assessment or now it's going to be called a new source  
15 review.

16                   So the stationary sources that I identi  
17 of course, would be all of the barns associated with  
18 egg-laying operation, all of the lagoons associated w  
19 the manure or waste water storage, and then, of cours  
20 you have your feed delivery system, your generators a  
21 the boilers that the county has identified. Of cours  
22 had to identify these from the street but if, you kno  
23 had a site inspection, we may find something else,  
24 correct.

25           Q.     What are the types of air pollutants that wo

1 be emitted from the poultry operation at the Tonopah  
2 Ranch?

3 A. Right, and I believe Dan provided some exhibit  
4 on -- some research on typical air pollutants from po  
5 operations and from egg-laying operations and, of cou  
6 I have done similar reading and research in the last  
7 15 years but you're looking at basic categories.

8 For today's hearing, we're going to be  
9 looking at particulates and volatile organic compounds.  
10 The particulates are from feed dust, dander, feathers  
11 animals just in their movement producing particulate  
12 matter, and the particulate matter that we're concern  
13 about is PM-10 which is actually very, very small, no  
14 really visible to the naked eye but it's respirable a  
15 PM-2.5, which is even more respirable; then the volat  
16 organic compounds which those come from the degradati  
17 from the manure, the feces and urine which all comes  
18 the same place in a bird, but that fecal material, as  
19 degrades, it's going to release volatile organic  
20 compounds, right?

21 As proteins degrade, that's the natural  
22 course and then there is also, of course, ammonia and  
23 is from the degradation of the urease part of fecal  
24 material. It is a very, very large amount from poultr  
25 That's a big part of their emissions, and then other



1 things that are normal like carbon monoxide from their  
2 breathing, methanes and other things that are not going  
3 to be spoken of here today. So we're looking at particulates  
4 and VOC's today.

5 Q. Is there anything else you would like to comment  
6 about the stationary sources and pollutants?

7 A. No.

8 Q. So let's talk about emissions. What is an  
9 emission factor?

10 A. Okay. An emission factor is some kind of a  
11 number you can multiply by, like, in this case, with  
12 animal feeding operation, the number of birds at the  
13 facility. So the emission factor that we're looking  
14 at here today would be pounds of that pollutant per bird  
15 day or per year. There's other kinds of emission factors  
16 that could be a function of ventilation rate, et cetera  
17 but we are just looking at some simple emission factors  
18 to show that there's definitely many ways at the facility  
19 to trigger 110 per year criteria pollutant in order to have  
20 further investigation.

21 Q. How can emission factors be derived? And perhaps  
22 as part of that, you'd like to talk about the potential to  
23 emit, a guide for small business which should have been  
24 provided in everybody's packet and this would be page 13 -  
25 page 13 to maybe 16?

1           A.     And this is the SBAP the EPA published in  
2     October 1998 and what this Small Business Assistance  
3     Program was supposed to do is provide an interpretation  
4     the Clean Air Act for small business people, right.  
5     is not a policy wonk document. This is supposed to be  
6     you know, putting it into regular people's terms so small  
7     business owners can understand whether or not they need  
8     get a permit, and one of the great things about it is  
9     this document on page 13 it says how do I determine if I  
10    have a potential to emit? How do I figure out, you know  
11    what my emissions are? And so the EPA gives the hierarchy  
12    of data, which is basically a science or engineering  
13    function, the hierarchy of data in any permitting process.  
14    Also, the air quality permitting program would be to use  
15    at measured data from the existing site, correct, or use  
16    measured data from a similar site, emission factors based  
17    on actual sites, okay, that isn't in a book; that's just  
18    applied, whatever, then some modeling and then, of course  
19    there's always lesser guesses, okay.

20                So what we are trying to say today is that  
21    the county was claiming that there was -- there was no  
22    defined emission factors by the EPA. They were doing  
23    large nationwide study. It was very extensive. They went  
24    to great pains through the National Compliance Order  
25    get people to sign up and to get some sort of amnesty

1 during the study in order to determine a final emissi  
2 factor for animal feeding operations. There would be  
3 several different factors, one for each type of speci  
4 that once that number was determined, then every sing  
5 CAFO or animal feeding operation in United States, ev  
6 last one of them had to look at that number and calcul  
7 the emissions. There would be no exceptions. Okay.  
8 that's when the study is finally done and the emissio  
9 factors are published.

10 Where we're at right now, the study has  
11 done. There are publications of the emission factors  
12 developed by Dr. Heber out of Purdue with respect to  
13 poultry emissions. It was a robust study. I believe  
14 you look at the exhibit provided by the county, there  
15 nearly 400 pages that shows how robust Dr. Heber's st  
16 was looking at emissions from poultry facilities, and  
17 we are saying and also the EPA says that, yes, you ma  
18 have fantastic beautiful data in the future, but you  
19 the dance with the girl you got. You go with the dat  
20 have at hand. We're not going to wait indefinitely f  
21 perfect information, so -- and I think we have some  
22 documents in the exhibits that say that by the EPA wi  
23 respect to the Buckeye egg facility or with the Calif  
24 dairy study. I don't remember the exhibit numbers ri  
25 off the bat, but they're in there.

1           So the EPA has been pretty clear all al  
2 even though they know they have the study going on on  
3 side, that they still expect people to use -- to gene  
4 emission numbers using the best available numbers tha  
5 they have at hand, contrary to what the county would  
6 to do which is wait forever, right.

7           So what we're saying is there is a beau  
8 study out there with these beautiful numbers and ther  
9 also consent orders by EPA for poultry egg-laying  
10 facilities that have estimated emissions from 2005.  
11 these are emissions that went through a legal process  
12 a consent order and so, you know, they've been tested  
13 certain extent way more than just a graduate student'  
14 thesis, for example, and that those numbers were avai  
15 to generate a range of emissions from the Tonopah fac  
16 which Mr. Blackson had calculated and shown in quite  
17 laborious detail in his pre-hearing disclosure.

18           And so my purpose here today is -- as a  
19 professional engineer is to say that I've reviewed th  
20 emissions calculations. I have reviewed his source  
21 material and his methodology of how he presented the  
22 information to you, and I believe that he has been fa  
23 accurate in what he has presented to you, and he's sh  
24 time and time again, no matter whether you went to th  
25 NAEMS study emission factor, whether you went to the

1 Buckeye factor, whether you went to the -- was it the  
2 factor, I think, whether you were in particulate mate  
3 or whether you were at VOC's, hitting over a hundred  
4 per year, sometimes in the 200, 300 tons per year, us  
5 existing emission factors, some of which have been  
6 available for 11 years now, right.

7 So there's absolutely no reason from th  
8 day forward to ignore the fact that you have major  
9 stationary sources at the facility that generate more  
10 100 tons per year and that there needs to be a decisio  
11 made now whether you continue to provide a non-Title  
12 permit by basically ignoring this information, you kn  
13 forever, I guess, or you take a stand at the procedur  
14 are in, the permitting process, which is creating a r  
15 permit, a modified permit that at that point, you tak  
16 that opportunity to remedy and go forward under whate  
17 permit program is required after you do the new sourc  
18 review, correct, which is what we're asking to have d  
19 okay?

20 MR. BLACKSON: Also, sometimes a visual  
21 be very helpful and there's an EPA document that I  
22 recently found that talks about AP-42 and it has a ch  
23 on it that kind of shows a hierarchy of emission fact  
24 and I would like to be able to enter it in as an exhi  
25 I did quite a bit of research over the weekend. In

1 particular, if you would look at page four --

2 MR. SWAN: The county has no objection  
3 this document.

4 CHAIRMAN LEONARD: Okay. We'll admit t  
5 BY MR. BLACKSON:

6 Q. So, Miss Martin, if you could share a little  
7 more information about emission factors and how some  
8 perhaps more accurate than others?

9 A. Right. I believe we got this from the publi  
10 AP-42, okay, right, and what's nice about Figure 1 is  
11 includes that engineering judgment I was speaking of  
12 we like to look at, you know, actual emission values  
13 obviously, then going to source category emissions mo  
14 and then the reliability gets better as you get close  
15 your facility. And there is additional cost, but wha  
16 have access to is unique because we have a national  
17 emission study which was paid for, you know, several  
18 million dollars was paid for by the participating  
19 producers. So we have access to great data without h  
20 to make one particular applicant do some testing, rig

21 Q. Okay. Thank you. So you talked about the  
22 calculations that I prepared during the pre-hearing  
23 disclosure and you found those to be understandable a  
24 acceptable calculations; is that correct?

25 A. Correct. I reviewed the calculations. Ther

1 several in this disclosure, three or four different p  
2 and I've looked at all of them. So unless we want to  
3 through them one by one, I think if you read the  
4 disclosure, you know what I'm talking about. I have  
5 looked at his source materials that are also exhibits  
6 as an engineer, I believe he made good solid decision  
7 how to transfer some of the emission factors to apply  
8 Tonopah.

9 Q. Do you believe that it would have been prude  
10 for the county, as part of the minor permit modificat  
11 process, to actually conduct sampling of the existing  
12 houses at the Tonopah Egg Ranch?

13 A. Well, you're in a unique position. Once tha  
14 facility's constructed and in operation, no matter wh  
15 it's an egg-laying facility, to a power plant or anyt  
16 else, once the facility is in operation, everyone has  
17 access to taking samples, right? And that is built i  
18 the Clean Air Act, right?

19 So, yes, and the fact that Hickman's is  
20 constructed, the Tonopah facility is in operation, so  
21 types of measurements could have been made and you co  
22 have followed some of the more complex methods listed  
23 the national emission study or you could have come up  
24 some lesser cost measures, but it can be done, of cou

25 Q. So you're saying that there is a variety of

1 to estimate the emissions from all the sources used in  
2 new source review process for this minor permit  
3 modification at the Tonopah Egg Ranch? The county would  
4 not be limited to one particular emissions factor; they  
5 could have measured -- AP-42 doesn't have a particular  
6 emission factor, but they could have measured -- they  
7 could have used industry; they could have used the small  
8 business approach. There's a variety of ways that  
9 emissions factor could be selected?

10 A. Correct. And let me tell you it is the same  
11 thing that happens during evaluation of a nutrient  
12 management plan. There's like three different ways to  
13 calculate the amount of nitrogen in the manure from the  
14 different well-known peer review sources, and you can  
15 calculate a range from low to medium and just say  
16 somewhere in between is where this facility lies or you  
17 can be conservative and prepare a nutrient management  
18 according to the maximum nutrient value.

19 So similarly, you can look at a variety of  
20 emission factors that were available, find a range and  
21 then either pick an average or somewhere closer to the  
22 higher end to be conservative, meaning you're making  
23 you're not underestimating emissions; you might be a  
24 little bit overestimating emissions and see if that  
25 triggers a different permitting program. If it doesn't



1 it doesn't. But if you've never done the calculation  
2 all, which is what we have determined through the e-m  
3 that Mr. Blackson collected during his public informa  
4 requests and reading through what he got back from th  
5 county, there is no proof of any calculations. And,  
6 fact, I think he got an e-mail response back from  
7 Jacqueline or something that just said no calculation  
8 calculations, no calculations. So there was no doubt  
9 it was not done. We wanted to make sure we didn't mi  
10 something.

11 Q. Would you like to discuss the flaws in the  
12 county's arguments that they need to wait for official  
13 emissions factors from the EPA in order to determine  
14 new source review pollutant emissions from the Tonopa  
15 Ranch?

16 A. Right. And this kind of goes to the county's  
17 pre-hearing disclosure where they are pointing to Ind  
18 and saying, well, Indiana did -- in fact, in one of t  
19 e-mails from the county, Mr. Sumner said, well, India  
20 did this study on air emissions and they didn't chang  
21 Indiana air quality rules to require permits. Howeve  
22 that Indiana study which was done at Purdue by Dr. He  
23 was not a study for Indiana. It was a study for the  
24 national compliance program, first of all.

25 Second of all, I've been working in Ind

1 since 2004, and I know a lot of people in the water  
2 quality division of IDEM and I know if they have some  
3 called a non-regulatory policy statement, that that's  
4 enforceable in the State of Indiana, okay. So that's  
5 which is the document that I believe the county provi  
6 as saying, look, they're saying right there in this  
7 brochure that the EPA doesn't have a final emission  
8 factor, so we're just going to permit boilers and  
9 generators, so I think we'll do the same thing that  
10 Indiana does, which is an interesting idea to go all  
11 way across the country to Indiana when you can just go  
12 right next door to California who has 30 some odd air  
13 quality county boards such as yourself that are deleg  
14 authority that do have large-scale animal feeding  
15 operations that were involved and are involved in iss  
16 permits for animal feeding operations that were under  
17 stern compliance eyes of EPA by creating an ag exempt  
18 from the Clean Air Act.

19 That's who you need to look for as the  
20 your future because that's where somebody is actually  
21 doing the permitting they're required to do. The sta  
22 attempted to provide a statewide exemption for  
23 agricultural facilities and EPA came back and say, uh  
24 you can't do. That's in violation of your SIP.

25 So that's who you need to go to for

1 guidance, the people who are being out there issuing  
2 permits and at least being set straight on how these  
3 permits need to be operated versus another state who  
4 just threw up their hands and said we're not going to  
5 it until somebody makes us do it. So I find that to be  
6 fatal flaw in that particular part of the argument.

7 I think you have plenty of information  
8 the research out of the national compliance. I think  
9 have resources in the EPA itself, not only in region  
10 but in other regions such as where Ohio is and how they  
11 handle the Buckeye Egg that you could reach out and you  
12 could get access to their emission factors and understand  
13 how barns are stationary sources and how you estimate  
14 emissions from not only poultry facilities but other  
15 housed animal feeding operations in the state.

16 Q. Does the Clean Air Act have an exemption for  
17 animal feeding operations?

18 A. No, it does not, and that's been stated over  
19 over again by EPA in the federal register and other legal  
20 documents such as Buckeye Egg and the dairy in California.  
21 So it's not just my opinion. This is by reading EPA's  
22 words.

23 Q. Are there any other observations, comments that  
24 you'd like to make about the stationary sources emissions  
25 calculations or county's application or regulations

1 related to the facility?

2 A. Let me just look real quickly at my notes here.  
3 I did just want to give a short chronology of events  
4 the record because we didn't really provide anything  
5 that in the -- it might help.

6 You know, the original permit was issued  
7 November 2014, and I believe in December of 2014 there  
8 a new ozone standard that EPA came out with in December.  
9 In the following year, the application for the minor  
10 permit modification was submitted, also November of 2015  
11 so don't mix those dates up.

12 Then meanwhile, this Board made the rule  
13 changes to incorporate TSD and that was official in  
14 February 2016; maybe not this board but Maricopa County Board.  
15 Sorry, and then in May of this year EPA changed the standard  
16 of Maricopa County from marginal to moderate for the  
17 eight-hour ozone. So that's going on in the background of  
18 this permit, this minor modification permit being issued  
19 which was then issued June 10th of 2016 this year with  
20 responsiveness summary. And then of course Maricopa County  
21 County is required to have their moderate ozone plan submitted to  
22 the EPA by January 2017 which is just a couple of months away  
23 from today. That includes your reasonably attainable  
24 control technology, your RACT, for the eight-hour ozone.

25 So while this Hickman facility permit was being issued,

1 going on, we know that you had attained -- ozone, you  
2 know, attainment, it was like getting within reach.  
3 you had a bump in Central Phoenix so now you're in  
4 moderate so you have some other issues going on. The  
5 issue related to ozone of course is VOC's. Here is a  
6 permit, an air permit that completely ignores hundred  
7 tons of VOC's. So when you look at the documents that  
8 were presented to EPA in your state implementation plan  
9 where you have your pie charts that show what are the  
10 sources of VOC's in Maricopa County non-attainment area  
11 those -- that pie chart is based on invalid, you know  
12 accurate data, right. So maybe you're not seeing the  
13 impact of some of the animal feeding operations around  
14 Phoenix area.

15           You know, of course, we have a lot of  
16 dairies down in cowtown, but I just wanted to bring that  
17 up; that under the -- underneath this permit issue that  
18 we're talking about today, you also in this county have  
19 some pretty serious issues with the ozone and it's all  
20 related to VOC's.

21           So I am not sure I am going to give you  
22 recommendations, but I believe that there's an -- it's  
23 possible to estimate PM-10 and VOC emissions. It's  
24 possible that this facility could be considered from  
25 on to be a Title V facility and therefore start

1 incorporating, but you need to do a new source review  
2 You need to do that. The applicant and the county ne  
3 to do that and make sure that there's some interactio  
4 right. We can't do that for you. We're just showing  
5 that there's definitely signs that it's what you shou  
6 have done in the past, right.

7 Q. What's your opinion on fugitive and non-fugiti  
8 The county has taken a position that the emissions ar  
9 non-fugitive.

10 A. Oh, sure, yes, and I wanted to add on to  
11 something that Mr. Blackson said in his testimony whe  
12 was just talking about the opening of the barns. And  
13 you have ever been out by Hickman's, the typical  
14 egg-laying barn is a very long barn, and one end is w  
15 they have manure storage and they have an opening the  
16 that's permanently opened so trucks can come in and c  
17 get manure, but also so that the ventilation fans ins  
18 the barn are blowing the air pollution from inside th  
19 barn out of the barn through the ventilation fans acr  
20 the manure to dry them; thereafter creating more emis  
21 from the drying of the manure, okay.

22 This is fine. Nobody is saying you can  
23 cannot do that, but the actual vents for these barns  
24 those ventilation fans. There is movement from where  
25 animals are laying the eggs, the birds are laying the

1 where there's -- manure is deposited where it's initi  
2 volatilized. The particulate matter is also generate  
3 there from the bird movement, their feathers, et cete  
4 the feed. Especially when they do feeding, there's a  
5 definite rise in particulate material.

6 If you want to look at some of the diag  
7 in Dr. Heber's report on the Indiana poultry faciliti  
8 all of those pollutants have to be removed from the  
9 presence of the birds or it will harm them. It's bad  
10 their health. It could kill them. So the vents take  
11 air out and blow it out of the barn, and in this  
12 particular design, it's blown out of the barn across  
13 manure pile.

14 So I believe as a stationary source, th  
15 vent that you're looking for starts at the ventilatio  
16 fans and then it's combined into one, and then there'  
17 many ventilation fans, and it's combined into one ven  
18 the opening of the barn, and those are not fugitive  
19 emissions coming out of the fans; those are non-fugit  
20 emissions and should be treated as such.

21 MR. HISER: For the benefit of the Boar  
22 because we have not been there to see it, like you ha  
23 been, so the barn is a long structure. One end of it  
24 sort of quasi open and has the manure storage, manure  
25 handling in that, and then is it your testimony that

1 are fans at the end of this long barn which are blowing  
2 the air from the laying areas across the manure pile  
3 out the end of the building? Is that what you're saying?

4 THE WITNESS: Let me answer your question.  
5 Two things. There's actually an exhibit that has some  
6 photographs of the barns and that was -- and we also have  
7 some photographs that the citizens took, but the court  
8 has some inspection reports that have the pictures of  
9 outside of the barns, but let's look at these two  
10 exhibits.

11 CHAIRMAN LEONARD: While you're passing  
12 off, Mr. Blackman, do you have an estimate how much time  
13 you may be? The only reason is if we're getting close  
14 can finish and then take our break or if you think you  
15 going to go a little bit longer --

16 MR. BLACKSON: I don't expect to be much  
17 longer. I have a couple estimates on the other federal  
18 register I would like for Miss Martin to respond to and  
19 we'll be done.

20 CHAIRMAN LEONARD: Not a problem. I am  
21 taking into account the fact our court reporter hasn't  
22 a break.

23 THE WITNESS: Okay. So we're looking at  
24 Exhibit 34 -- 33 and 34 which are color photographs that  
25 were taken by the citizens from the road, and let me



1     sure I'm --

2                     MR. HISER:   Why don't you just hold the  
3     so we can see?

4                     THE WITNESS:   I wanted to make sure I h  
5     mixed them all together.   So that was my first concer  
6     What we're looking at here is at the corner of, oh, g  
7     415th Avenue and Indian School Road.   That is photo n  
8     one, so that would be Exhibit 34, and then the other  
9     is -- and what you're going to see here is -- this is  
10    probably taken at the same time and these are extras.  
11    These -- and according to an e-mail by Kelly Reed, th  
12    photographs were taken October 20th, 2016, both of th  
13    were.

14                    So that we're standing north and east o  
15    facility probably, something like that, because these  
16    openings that you see, with the -- like a gray shadin  
17    the top, that's actually a fabric awning.   It would l  
18    flat if the ventilation fans were not blowing, but wh  
19    the ventilation fans are blowing from inside the barn  
20    they push this fabric out.   It kind of billows out li  
21    balloon.   And you see at the bottom of each barn a wi  
22    opening and that's where the trucks can come in and o  
23    pick up the manure to take to the Arlington facility.

24                    In one of the exhibits -- in both exhib  
25    you can see some opacity just from like fugitive emis

1 from trucks going on a dirt or gravel road.

2 BY MR. BLACKSON:

3 Q. Actually, this is -- this photograph -- both  
4 these photographs are from the operation of loading t  
5 manure that's piled inside the building with a front-  
6 loader into a truck to be hauled off.

7 A. Sorry about that.

8 MR. SWAN: Mr. Chairman, I believe Mr.  
9 Blackson is testifying at this time.

10 MR. BLACKSON: I apologize.

11 THE WITNESS: If we had longer to prepa  
12 to provide this case to you properly, then there coul  
13 have been someone come up and talk to you about the  
14 photographs, et cetera. We were there yesterday, and  
15 saw truck traffic on the other side of the barns whic  
16 not where the opening is. So I apologize but, yes, s  
17 he's correct. This is during manure load-out. I  
18 apologize. We're both a little frazzled trying to ge  
19 this all in a couple of --

20 CHAIRMAN LEONARD: Just so we can come  
21 I want to make sure that the question that was asked  
22 lost. We were talking about the venting and how the  
23 venting might come across, and then when we get to th  
24 point, I think the next point is something along thos  
25 lines. It was a question of making clarification for

1 Board as to what your thoughts were on that.

2 THE WITNESS: And I believe the attorney  
3 asked if the ventilation fans were at the end of the  
4 barns. They are inside internally in the barns. The  
5 on the other side of the manure storage so that they  
6 internally in the barns. They're not at the end. Other  
7 types of laying barns, they are actually like on the  
8 of the barns.

9 BY MR. BLACKSON:

10 Q. Miss Martin, to conclude, do you believe the  
11 fugitives from the hen houses -- or the emissions from  
12 hen houses are fugitive or non-fugitive?

13 A. From the hen houses coming through the  
14 ventilation fans, they are non-fugitive. Items like  
15 trucks going on the gravel roads, those would be  
16 traditional fugitive.

17 Q. Okay. Thank you. There is an exhibit that  
18 have for the federal register. It's volume 70 and I  
19 believe it might be Exhibit 13, and what this exhibit  
20 is the animal feeding operations consent agreement and  
21 final order and on page 4950 -- or page 4959, in the  
22 left-hand column about in the middle I'll go ahead and  
23 read this and then I will ask Miss Martin a question.

24 The EPA says, "To the extent that certain  
25 pollutants from AFO's are regulated under the Clean Air

1 Act and are emitted in quantities that exceed regulat  
2 thresholds, EPA can and will require AFO's to comply  
3 all applicable Clean Air Act requirements including  
4 limiting those emissions where appropriate."

5 So, Miss Martin, do you believe that th  
6 is intending to continue enforcement and has the auth  
7 to enforce permitting for poultry operations?

8 A. They have the authority to do permitting and  
9 also have the authority to do enforcement.

10 Q. Thank you. And also --

11 A. Maybe I should clarify. The enforcement --  
12 enforcement restriction would be given to the people  
13 signed up for the national compliance agreement. The  
14 some restriction on what the EPA will do to sue them  
15 folks that had not signed up or dropped out of the pr  
16 lost that privilege of amnesty.

17 Q. Also in the same document on page 4961 on th  
18 right-hand column kind of towards the upper middle, "  
19 recognizes state and local agencies are undertaking  
20 efforts to improve emissions estimation methodology f  
21 animal feeding operations. EPA supports continuing a  
22 to improve emissions information for all sorts of sou  
23 categories and will use the best information availabl  
24 we implement our programs. EPA also supports state a  
25 local efforts to demonstrate improved emission redire

1 strategies and recognizes the value of state and local  
2 control requirements tailored to the needs of specific  
3 geographical areas."

4 Do you believe that this is a message to  
5 encourage state and local agencies to continue to develop  
6 emission factors and regulate AFO's?

7 A. Yes.

8 Q. Would you like to add anything else to your  
9 testimony?

10 A. Let me check my notes one more time. I think  
11 that will be fine.

12 MR. BLACKSON: We're done, whatever the  
13 official term is.

14 CHAIRMAN LEONARD: Well, if I might say  
15 understanding that this is somewhat a new process, we  
16 done. At this point, what I'd like to entertain is to  
17 a ten-minute break so everybody can get up, stretch their  
18 legs, use the restroom.

19 When we come back, there will be an  
20 opportunity to the Department to proceed, and depending  
21 how long that takes, we will move into the next phase.  
22 Let's adjourn for approximately ten minutes and then  
23 go from there.

24 (Recess taken, 3:24 p.m. to 3:37 p.m.)

25 CHAIRMAN LEONARD: All right, folks. M

1 Martin, I hate to be officious for you, but I remind  
2 you're still under oath.

3 If the Department would like to go ahead  
4 cross at this point, this would be your opportunity.

5 MR. SWAN: The Department has no question  
6 to ask this witness.

7 CHAIRMAN LEONARD: Okay. Well, you're  
8 to sit down.

9 Mr. Swan, you're up.

10 MR. SWAN: I would call as our witness,  
11 Richard Sumner.

12 MR. HISER: Mr. Sumner, if you could state  
13 your name and address for the record.

14 THE WITNESS: My name is Richard Alan  
15 Sumner. My address is 1156 East Grandview Road, in  
16 Phoenix, Arizona.

17 RICHARD ALAN SUMNER,  
18 a witness herein, having been first duly sworn by the  
19 Certified Reporter to speak the truth and nothing but  
20 truth, was examined and testified as follows:

21 CHAIRMAN LEONARD: Mr. Swan.

22  
23 EXAMINATION

24 BY MR. SWAN:

25 Q. What is your current position at the Department?

1           A.     I am currently the air quality permitting  
2 manager.

3           Q.     Can you give the Board a summary of your  
4 educational and licensure background, please?

5                   CHAIRMAN LEONARD: Mr. Swan, get pretty  
6 close to the mike.

7           A.     Education-wise, I received my Bachelor's Deg  
8 in civil engineering from the University of Missouri,  
9 Raleigh in 1977 and subsequently received my Master's  
10 Degree in civil engineering from the same university  
11 1981 with an emphasis in environmental engineering.

12                   So when I left college after the Bachel  
13 Degree in 1977 and began work in the refining and che  
14 industry, I began addressing air quality issues there  
15 Even when I was in college, I had the opportunity to  
16 doing some air quality work. One of the papers that  
17 wrote was -- my junior year in 1976 was one addressin  
18 ozone depletion, the hole in the stratospheric ozone.  
19 I have seen a few air issues come and go along throug  
20 years.

21                   After about ten years in chemical refin  
22 we got here to Arizona, went to work in the printing  
23 industry, as an environmental engineer for a printing  
24 company, and the primary issue we dealt with there wa  
25 quality issues.

1                   From there, I moved on to a phone making  
2 company; again, additional air issues, particularly V  
3 and how to address those, from making phone cups, and  
4 moved to consulting. We did a myriad of types of pro  
5 here in companies that we dealt with. One of the mor  
6 interesting ones was how to address emissions from  
7 companies that make rocket fuel for jet ejection seat  
8 So I have seen some interesting things from all diffe  
9 types of air quality issues.

10                   And I moved on to El Paso, Texas to wor  
11 with what was known as El Paso Corp. which is now a p  
12 of Kinder Morgan, and there I initially started as a  
13 engineer working primarily with air quality Title V i  
14 for compressor stations, promoted to the manager over  
15 environmental manager and then I was promoted to the  
16 director of environmental health and safety at the  
17 corporate level.

18                   And so that in about 2003, left El Paso  
19 which was then located in Houston, moved to Californi  
20 a slight career diversion and spent five years as a p  
21 at a church in California up until 2008, and then I c  
22 back to Arizona, resumed my environmental engineering  
23 career, started with the county as a staff engineer,  
24 promoted to supervisor over the Title V large source  
25 program and then promoted in 2013 to the position I



1 currently hold which is the permitting division manag

2 Q. Thank you. Today the focus of our hearing is  
3 Hickman Egg Ranch facility in Tonopah located --

4 MR. HISER: Mr. Swan, before you get an  
5 further, is the Department's wish to qualify Mr. Sumr  
6 an expert witness?

7 MR. SWAN: Yes, it is.

8 MR. HISER: Is there any objection from  
9 Mr. Blackson?

10 MR. BLACKSON: Well, I guess I do. He  
11 started off as a -- requested to be a lay witness, not  
12 expert witness and now it's changed. So I guess I wo  
13 like to maybe question a little bit more about his  
14 expertise when it comes to permitting.

15 MR. HISER: Mr. Swan.

16 MR. SWAN: Okay.

17 BY MR. SWAN:

18 Q. Richard, your permitting experience, we've h  
19 about it here with the county. We can come back to i  
20 necessary. In your earlier positions, was there  
21 permitting experience that you gained in those?

22 A. Yes, there was. All along, whether it's bee  
23 starting with the time in the refinery, whether worki  
24 with the initiation of the Title V program in the lat  
25 nineties, I worked on probably, I would guess, 40 to

1 Title V permits with El Paso Corp. during that tenure  
2 then we went through probably 4- to 500 permitting ac  
3 a year here in the county. So that that total would  
4 probably be somewhere over a thousand during my time  
5 at the county.

6 Also, I would like to mention I am a  
7 registered professional engineer in the State of Ariz

8 MR. SWAN: Is there any need for further  
9 questioning?

10 MR. BLACKSON: I have no further questi

11 CHAIRMAN LEONARD: Are you maintaining  
12 objection or are you prepared to allow him in as an  
13 expert?

14 MR. BLACKSON: I'm prepared to allow hi  
15 an expert witness. Thank you.

16 MR. HISER: Thank you. Just to clarify  
17 record. Thank you. Mr. Swan, back to you.

18 BY MR. SWAN:

19 Q. What type of business is the Hickman Egg Ran  
20 involved in?

21 A. Yeah, they are in the -- in the business of  
22 poultry egg producing.

23 Q. Can you walk us through the permitting histo  
24 the Hickman Tonopah operation as it concerns Maricopa  
25 County Department of Air Quality?

1           A.     Yes.   Okay.   I believe you heard a little about  
2   that earlier.   Just to reiterate some of those points  
3   that in 2014, we received the initial permit for the  
4   Hickman facility.   That permit was granted, I believe  
5   November of 2014 and it was subsequently requested to  
6   modified, revised in 2015 with a minor permit revision  
7   that was submitted, I believe, also in November of '15.  
8   That permit was then issued in June of 2016.

9           Q.     The first air quality permit issued to Hickman  
10   what classification was that?   Was it Title V or  
11   non-Title V?

12          A.     That permit was a non-Title V permit.   You know  
13   we've had a significant amount of discussion about what  
14   types of emissions that are to be considered and not  
15   considered here so far today, and so when we looked at  
16   that initial permit, you know, we looked at the equipment  
17   that was being there, and there was 12 emergency engines  
18   for part of that original permit and also looked at other  
19   pieces to the facility that were -- that were present  
20   animal feeding operations which includes the manure pits  
21   includes the hen houses, includes the lagoons, and as  
22   been communicated, we considered those to be fugitive  
23   emissions for various reasons.

24                         Number one, the type of opening that's  
25   the building, we believe those couldn't be reasonably

1 captured as a point source and should be considered a  
2 fugitive. You've seen pictures of the front of the  
3 building and the pictures that were taken there, and  
4 look through some of the documents on the nutrient  
5 management plan, there are dimensions for the building  
6 there that you have in the record that was provided by  
7 Blackson that I believe the width of the opening of the  
8 buildings is 84 feet. So it's not exactly a small  
9 opening. The height of the building at its peak is about  
10 40 feet before the springs were added to help to reduce  
11 the emissions that might be coming out.

12 So this is not a small -- I tried to put  
13 84 feet into perspective, and since it is the middle  
14 football season, I figure that's about a 28-yard  
15 completion from Carson Palmer to Larry Fitzgerald. So  
16 it's a pretty good gain. So that it's not a small  
17 opening. So from that aspect of it, we looked at the  
18 being fugitive.

19 You know, we also considered some of the  
20 work that had been done as part of the hen house study  
21 and EPA and this is -- we relied on this. We looked at  
22 the permits was -- that EPA had said these were open  
23 issues, whether these were fugitive or non-fugitive,  
24 they would look at those at a later date and begin to  
25 provide some emission factors with those and that that

1 a national issue that would really require a national  
2 solution. So we relied on that when we put the permit  
3 together originally.

4 Therefore, the main things that we look  
5 were the engines that were part of that permit and then  
6 with the minor mod, we added eight more emergency engines  
7 that are diesel fired; in addition to that, two boilers.  
8 So, again, there's some discussion about the boilers,  
9 those were there at the beginning but were only picked up  
10 in the minor modification. So those were added into the  
11 permit as part of the minor modification at that time.

12 Q. Can you tell us, beginning with the receipt of  
13 the application for the minor permit revision, what  
14 processes did you go through, you and your staff go  
15 through to evaluate that application?

16 A. Whenever a permit application comes in, our  
17 step is to run it through an administrative review to  
18 determine whether everything from the administrative  
19 perspective is in place: the name is there; is it signed  
20 addresses, contact, just very, very basic information.

21 Once that is complete, we are satisfied that we  
22 have sufficient information from which to be able to issue  
23 the permit to the next step, it goes on to the -- assignment  
24 to a permit engineer. That permit engineer then begins  
25 the technical review process to see if we have the

1 technical information with which to process the permit  
2 determine, you know, whether it is non-Title V, Title  
3 permit, what rules apply, whether things like NSR apply  
4 what national maximum standards might apply, all those  
5 types of things. We -- you know, we look at, whenever  
6 permit comes in, to be able to determine what rules to  
7 apply, which of our local rules and what standards to  
8 apply once the emissions are determined.

9           So a permit engineer goes through, evaluates  
10 all of those types of things. We go through several  
11 iterations internally to look at the draft permit. The  
12 permit engineer would develop -- and in that draft  
13 process, you know, there may be several moves back and  
14 forth, and you've seen some of the internal e-mails that  
15 were part of that sausage-making process where the permit  
16 engineer may put something down and someone else will  
17 at it and say you missed that or why isn't this in there  
18 or why is that in there? And so you've seen some of the  
19 pieces that we will look at until -- our objective is to  
20 get it right, get the permit to be complete as to what  
21 information should be in there, what should not be in  
22 there and how we are then able to issue that final permit.

23           Before we get to that step, in the internal  
24 review process, we look at it among the engineering staff.  
25 The supervisor can be -- can be in on this one and then

1 also will have compliance look at it. We'll have the  
2 compliance staff take a look because they look at this  
3 maybe a little differently than the engineers would  
4 because they're boots on the ground, in the field more  
5 than us.

6 Then once we have a draft permit that we  
7 satisfied with internally that we feel meets all the  
8 requirements, that meets all the rule requirements, meets  
9 all the technical requirements, then we will forward  
10 on to the source to give them an opportunity to look  
11 at it, because whenever -- you know, they are obviously  
12 knowledgeable of the source than we are. So if there's  
13 something that we miss or misinterpreted, we want the  
14 source to be able to have the opportunity to identify  
15 so that we can correct it. So once all that is done,  
16 we will issue the permit.

17 Now, in the case of this minor modification  
18 there is a step that is not normal for us, and I'm not  
19 sure I've ever seen a minor modification have a public  
20 hearing. But because of the elevated public interest  
21 also because of Mr. Blackson, we posted it for a formal  
22 30-day public notice time which would not be normal for  
23 our rules would not require this for a minor modification  
24 but we did in this case and so -- to have opportunity  
25 for people to provide input, to comment on the permit and

1 give us -- give us their thoughts or inputs as to what  
2 should be there.

3 And so in that process, we not only did  
4 public -- or posting for public notice, we also then  
5 a public hearing to give, again, additional oral  
6 opportunity for people to -- opportunity for oral com  
7 on the permit, not just what is submitted in writing.

8 So after all those were completed, we  
9 addressed the comments that were made and put those  
10 together in response to comments and that puts us in  
11 position then to issue the permit.

12 Q. You mentioned that you were the head of the  
13 permitting department and quarterback of a staff of p  
14 that work for you. But with regard to this particular  
15 minor permit revision, how actively involved were you  
16 the process of evaluating it and the analysis that go  
17 on?

18 A. Yeah, I had more involvement in this one than  
19 would typically because of the elevated interest that  
20 there, and so we wanted to make sure that we had as m  
21 people look at it and make sure we got it right. So  
22 probably more involved in this than I would be typical

23 Q. In particular, you were involved in the  
24 calculations that were made by the Department?

25 A. Yeah. So when the calculations -- the staff



1 engineer would do that, and then all those calculations  
2 would then be reviewed by both the permitting supervisor  
3 and by me also to make sure that those were correct.

4 Q. Let me step back to one thing that I meant to  
5 ask you which was the -- you said one of the steps you look  
6 on a routine basis -- and I assume what you described  
7 both what the Department or your staff does in a typical  
8 evaluation as well as what you did for the Hickman  
9 evaluation; is that correct?

10 A. Right.

11 Q. What about -- one of the steps would be assume  
12 that the application is complete. Was there anything  
13 special or anything particular about the Hickman  
14 application in that regard?

15 A. Yes. With the -- with regard to the completeness  
16 of the application, it's been noted earlier that there was a  
17 section known as Z-M that was missing information, and  
18 that's a section where the applicant has the opportunity  
19 to be able to describe and calculate what the emissions  
20 would be from the source, and in this case, it was not  
21 filled out by Hickman's in their initial application,  
22 the minor modification application, and that's not  
23 unusual. As a matter of fact, it probably happens more  
24 that it's not filled out than it is because many sources  
25 do not have the sophistication or tools to accurately

1 able to calculate and predict what those emissions would  
2 be, and so -- but on the other hand, if we have sufficient  
3 information to be able to calculate that, we will do so.

4 And where we had the information on the emissions from  
5 engines and on the boilers, as to what size they were, and  
6 what types they were -- for instance, the engines were  
7 tier three engines. So with those, there are certified  
8 EPA emission factors that come with those. So even though  
9 the specific emission calculations weren't filled out, we  
10 had the opportunity then from the description of the equipment  
11 to be able to know what the emissions were. So even if  
12 even if someone does fill that out, we will always rely on  
13 those anyway because we're really -- we're not going to  
14 take the applicant's word for what those emission  
15 calculations are. We're always going to confirm those  
16 even if they were provided by the applicant.

17 Q. Earlier there was testimony about the emissions from  
18 boilers in the minor permit revision. Were the emissions  
19 of the boilers ultimately included? Were they included in  
20 the final emissions calculations?

21 A. Yes, the boilers were included in there and, again,  
22 again, part of that sausage-making process, when drafts  
23 are moving back and forth among staff and supervisors, and  
24 different ones, we may have pieces that are missing. So  
25 those were probably missing at one step of the drafting

1 the TSD when that passed through, and we tried to get  
2 information and understand what -- once we understood  
3 the boilers were there and be able to appropriately a  
4 those to the emissions for the facility.

5 Q. Let's get back to emissions calculations. W  
6 emissions were calculated?

7 A. So the emissions that we calculated were from  
8 point sources, from the non-fugitive emissions which  
9 be from the boilers and from the generators. We  
10 characterized the emissions from the CAFO, from the a  
11 feeding operations, again, the lagoons, the hen house  
12 the manure piles, and we captured those as being fugi  
13 emissions. And even if they had been -- so fugitive  
14 emissions, whether there's a determination whether th  
15 part of a Title V determination or not, was pointed o  
16 earlier from Rule 100, I believe 200.60, if I remembe  
17 correctly, of the determination of a major source.

18 When you have fugitive emissions, you  
19 include those only if the major source is one of thos  
20 categorical sources listed there in 200.60. So we we  
21 through the first part of that where it talked about  
22 fugitive emissions and calculations that go into the  
23 source determination, but fugitives for sources that  
24 not listed as categorical in that group, and you see  
25 28 of them that are there, all other fugitive emissio

1 are not included for major source purposes for operat  
2 that are not on that list. In this case, hen houses  
3 not on that list, so therefore, fugitive emissions we  
4 not considered to be part of that.

5 Q. So in conclusion, it is your opinion that all  
6 the emissions pertaining to the minor permit modifica  
7 were properly calculated?

8 A. Yes, we do believe those were properly  
9 calculated, and we had plenty of reason to not includ  
10 those. We've talked a little bit about what other st  
11 are doing. You heard about that. When we look at th  
12 State of Arizona, basically farm operations are exemp  
13 from Arizona, whether -- that is the law today. Rece  
14 as last year, the NSR rules for the State of Arizona  
15 revised. That was not deleted from any NSR rules at  
16 time, and so we believe that what the prevailing rule  
17 that we would not include those here; that even thoug  
18 they may be included in other jurisdictions, as we lo  
19 the data that's out there and see that, we just see i  
20 as not reliable enough for us to run out ahead of whe  
21 EPA is.

22 We look at how EPA regulates things. W  
23 there are a number of ways they do that. They may do  
24 on the basis of different types of rules or new sourc  
25 performance standards of which there's probably maybe

1 or a hundred new source performance standards out the  
2 none of which pertain to this type of operation. The  
3 are max standards, maximum available control technolo  
4 standards, maybe another 150 of those, none of which  
5 pertain to this operation.

6 There are control technique guidance  
7 documents that whenever EPA wants to regulate somethi  
8 they will provide that as a means for sources to be a  
9 to determine what the emissions are and how to handle  
10 those. There's been no CTG's or control technique  
11 guidance documents provided for this. There are a nu  
12 of ways that EPA will regulate these different type o  
13 sources, and we did not see that that had occurred in  
14 of those.

15 We also looked at the State of Indiana  
16 has been mentioned and whether the tests were run by  
17 state or not. They were run by Purdue University whi  
18 in the State of Indiana, chose a facility there, and  
19 they looked at that, we looked at, yeah, this is a si  
20 type situation to what we have, and it seemed reasona  
21 at that time to say, you know, if they're looking at  
22 they are disregarding -- they are not going to regula  
23 the animal feeding operation, the emissions only that  
24 from the point source equipment, it seemed like a  
25 reasonable conclusion for us to reach in doing likewi

1 here with this facility.

2 Q. I'd like to dwell for a minute on NSR. Mr.  
3 Blackson mentioned surprise that it didn't appear that  
4 had considered NSR, new source review. Can you tell  
5 again how -- or tell us for the first time what your  
6 review was and what consideration was given to the  
7 potential applicability of NSR to this facility under  
8 permit modification application?

9 A. Sure. NSR is new source review, and it applies  
10 in non-attainment areas. Where the facility is located  
11 it is located in the non-attainment area for ozone.  
12 ozone -- the precursor for ozone are NOx, nitrogen oxides  
13 and VOC, volatile organic compound, is a precursor for  
14 ozone. So those are the pollutants that you would look at  
15 primarily under NSR.

16 So the threshold for that would be -- for a  
17 major source in our current attainment status which is  
18 moderate, non-attainment of where we are, and so the  
19 threshold for that would be 100 tons per year. And  
20 looking at the point sources, the total NOx emissions  
21 under the minor modification are a total of just under  
22 25 tons of NOx, so it is well below the NSR threshold  
23 NOx.

24 The VOC emissions from the engines and  
25 boilers are like 1.2 tons. They are relatively small

1 So, you know, we concluded that they were well below  
2 NSR thresholds. As we previously mentioned, we did not  
3 look at the -- any fugitive emissions as part of the  
4 source determination under NSR because it is not a  
5 categorical source, and not being a categorical source  
6 did not look at the fugitive emissions.

7 Q. Did the Department perform a Rule 241 assessment  
8 and could you explain what that is?

9 A. Yeah. Rule 241 is -- we affectionately refer to  
10 it as our local BACT rule, best available control  
11 technology, and that -- and so when looking at this  
12 facility, the total emissions for BACT would be -- or  
13 threshold for BACT, for NOx would be 25 tons at the time  
14 because we were dealing under the old rules. That has  
15 since been moved up to 40 tons per year. At that time  
16 was 25 tons per year. From the original permit, the  
17 emissions of NOx from the original permit was about  
18 60 tons so BACT did not apply, and so Rule 241 would  
19 be triggered.

20 With the minor modification, about another  
21 additional eight tons of NOx was added and so we were  
22 still below 25 tons total which is really not even  
23 relevant because we'd only be looking at the modification  
24 anyway. The modification was only eight tons of NOx.  
25 therefore, under Rule 241 -- and even though it's not

1 spelled out explicitly in the TSD, as Mr. Blackson no  
2 you know, there's a fair amount of latitude with that  
3 we did look at those total amount of emissions and fo  
4 that the BACT would not apply which would be the esse  
5 and the substance of Rule 241.

6 Q. Would an NSR normally apply to a minor permi  
7 modification?

8 A. No. You could not have NSR apply to minor p  
9 modification because the definitions we looked at ear  
10 would preclude that from occurring.

11 Q. Mr. Blackson used emission factors to calcul  
12 the emissions from the Hickman process. Are those  
13 emission factors credible in your mind and based your  
14 analysis and expertise?

15 A. You know, there are a myriad of emission fac  
16 out there that we have seen. I know, looking through  
17 of the documents that was provided by Mr. Blackson in  
18 their disclosure of the 2006 study from Iowa State  
19 University, that showed just ammonia emissions, for  
20 instance, that are there. The EPA had estimated in t  
21 that the emission factors for ammonia should be like  
22 435 --

23 MR. BLACKSON: I object to this because  
24 ammonia is not permitted. It's not an -- I object be  
25 ammonia is not a permitted pollutant; it's not an NSR



1 pollutant. You don't have to have a permit to release  
2 ammonia, but when you get into EPCRA and that sort of  
3 thing, then ammonia is in play.

4 CHAIRMAN LEONARD: I'm going to overrule  
5 that objection only from the standpoint that there's  
6 we're talking about credibility. If you have other  
7 concerns, again, you'll have the opportunity, as I  
8 mentioned, for cross so --

9 THE WITNESS: But in those -- determinations  
10 of those emissions, EPA would have a factor of 435 grams  
11 of ammonia per year per each hen and which I would think  
12 that European numbers in the Netherlands would be pretty  
13 credible. That range was ten to 83 grams per hen per  
14 year. So you can just see the massive variation that  
15 occurs in different emission factors that are out there  
16 depending under what circumstances that they were run.  
17 They range all the way from ten to 435 for the same type  
18 of emission factor. And so with that absence, we feel  
19 like that the emissions factors just really weren't there  
20 to do that.

21 There's also a General Accounting Office  
22 report that was done, that was completed, and I believe  
23 this is also in our record. I don't know the page number  
24 right off. Do you guys have that over there handy that  
25 you can point these folks to, where the page number is?

1 that? I believe it's somewhere probably page AQ600  
2 something. I can't remember what the final exact num  
3 is.

4 Q. Can you identify the document again? I'm no  
5 sure I heard that.

6 A. It's a document for the General Accounting C  
7 where they evaluated concentrated animal feeding  
8 operations in looking at the studies that had been do  
9 and their conclusion was that EPA -- or the title of  
10 document was EPA needs more information and clearer  
11 defined strategies to protect air and water from  
12 pollutants of concern, and this was on the -- on the  
13 side of the main study, the national air emission  
14 monitoring study that had already been done.

15 So they had some conclusions about that  
16 report, if I may read those here. I have the page nu  
17 It is AQ0683, if that will help you find that in your  
18 documents, in our pre-disclosure documents that were  
19 provided.

20 It says, "However, questions about the  
21 efficiency of the sites selected for the air emission  
22 study and the quality and quantity of the data being  
23 collected could undermine EPA's efforts to develop ai  
24 emission protocol by 2011, and finally, while the stu  
25 and resulting protocols are important first steps, th

1 process-based model that more accurately predicts the  
2 total air emissions from an animal feeding operation  
3 still needed. While EPA has indicated it intends to  
4 develop such a model, it has not yet established a  
5 strategy and timeline for this activity."

6 And so, again, we're trying to look at  
7 body of evidence that's out there. Are we running to  
8 ahead to be able to come up -- use emission factors that  
9 may or may not have quality? And, again, our conclusion  
10 was the science just wasn't there yet. And when the  
11 science is there, we are -- we'll very actively and  
12 vigorously be able to enforce those and put those in  
13 permit and apply those to the appropriate sources, but I  
14 believe at this time that those are not there yet.

15 Q. The minor permit revision was to authorize the  
16 addition of boilers and eight emergency, small emergency  
17 generators as I recall, and both of those were  
18 characterized by the Department as point sources. Can you  
19 explain the determination in that regard briefly?

20 A. Sure, because the emissions from those types of  
21 operations come through a defined stack, through a defined  
22 point in the equipment rather than some large amorphous  
23 opening that really has no opportunity to be captured or  
24 controlled or really even accurately measured. Some of  
25 the other literature that we have looked at, you know

1 talked about how difficult it is to measure just, in  
2 general, emissions from hen houses and those types of  
3 operations, that it's one of the great encumbrances t  
4 able to quantify emissions that were out there, and  
5 whenever you're dealing with this type of operation,  
6 difficult to do.

7 Again, we think that the science will g  
8 there, but we just don't believe that it's there yet  
9 this type of point source that -- these are the point  
10 sources and the other -- all the rest from the animal  
11 feeding operation are fugitive emissions.

12 Q. I'm getting close to the end of my questions  
13 The Department has not promulgated rules addressing  
14 emissions from hen houses, manure piles and lagoons.  
15 you tell us why that is the case?

16 A. At this time, that is not a source category  
17 that -- you know, that we have looked at, and so thos  
18 emissions are not yet ones that we've elected to be a  
19 to quantify as we begin to work through different typ  
20 emissions that are out there.

21 Q. Okay. This is my final question: Based upo  
22 cumulative information you provided, based on calcula  
23 characterization and legal requirements, did the  
24 Department apply proper permitting standards and  
25 procedures when analyzing and evaluating the minor pe

1 revision?

2 A. Yes, we did.

3 MR. SWAN: I have no further questions.

4 CHAIRMAN LEONARD: Mr. Blackson, if you  
5 like to cross.

6 MR. BLACKSON: Yes, I would.

7  
8 EXAMINATION

9 BY MR. BLACKSON:

10 Q. Thank you, and, I apologize, I may skip around  
11 lot and kind of --

12 A. I do too, so that's all right.

13 Q. I think we're going to get through it.

14 Mr. Sumner, you've had training, right,  
15 the permitting process? EPA offers some training that  
16 talked about?

17 A. Yes.

18 Q. And how recent was that?

19 A. Probably the last one was about probably two  
20 years ago where we went through NSR training and BFP  
21 training that's offered nationally by EPA.

22 Q. Thank you. Can you show us in the Clean Air  
23 is there an exemption for animal feeding operations?

24 A. No, there is not an exemption in the Federal  
25 Clean Air Act for animal feeding operations.

1 Q. Now, you said there was an exemption, if I h  
2 correctly, an agricultural exemption. Can you cite w  
3 that exemption is?

4 A. Yeah. The agricultural operations for poul  
5 for cattle, for pigs, for different types of animals,  
6 those are under the agricultural exemption under ag E  
7 for the state, and so we did not regulate those.

8 Q. So you must be talking about ARS 49-457, cor

9 A. Yes.

10 Q. That exemption for all NSR pollutants?

11 A. It's primarily for PM-10 and so the PM-10  
12 emissions then are ones that --

13 Q. But not for BFP's?

14 A. Under that exemption, no.

15 Q. Now, you're saying it's an exemption. Perha  
16 you can read the definition of a regulated area. Tha  
17 definition will be at the very bottom. It's page six

18 A. I'm looking on the front page.

19 Q. They change how it appears now.

20 A. Regulated means Maricopa PM-10 particulate  
21 non-attainment area, any portion of area A that's loc  
22 in the county with a population of two million or mor  
23 persons and any PM-10 particulate non-attainment area  
24 established in this state on or after June 1st, 2009.

25 Q. Does the word state or statewide appear in t

1 definition of a regulated area?

2 A. It does not.

3 Q. Does the word county or countywide appear in

4 A. County does.

5 Q. Is it countywide, entire county?

6 A. Area A or PM-10 particulate non-attainment a

7 Q. Is the Tonopah Egg Ranch in a regulated area

8 A. It is not.

9 Q. Yet you apply BFP to the Tonopah Egg Ranch?

10 A. That is correct, because we have received  
11 guidance from the state that PM emissions are of a  
12 statewide concern, and that even though this may  
13 specifically list deregulated area here, that they ha  
14 taken the interpretation that this is a statewide con  
15 and therefore they are going to apply BMP's to all ar  
16 Given the county rules that exempt normal farm cultur  
17 operations from PM-10 regulations, then neither us no  
18 state would be able to have any activity and so the s  
19 has taken that activity there.

20 Q. And all of this came from a SIP process where  
21 EPA was going to come in and issue a SIP on agricultu  
22 activities and things?

23 Q. The EPA was interested in implementing a fed  
24 implementation plan because there was a gap in these  
25 regulations.

1 Now, the statewide concern does appear  
2 that statute, if I'm not mistaken. They make a  
3 philosophical statement about statewide concern about  
4 particulate matter; is that correct?

5 A. That's correct.

6 Q. But yet the legislature decided that's not h  
7 regulated area is defined, correct?

8 A. I can't address what the legislature might h  
9 said.

10 Q. Well, the legislature passed a statute, corr

11 A. That's correct.

12 Q. Did the legislature include a statewide BMP  
13 policy for a regulated area?

14 A. That -- I don't know what the legislature  
15 included. I knew ADAQ has, so we are kind of subserve  
16 to them.

17 Q. Did the legislature in the definition of  
18 regulated area give ADAQ authority to make it statewide?

19 A. No.

20 Q. Did they give authority to Maricopa County t  
21 make it statewide?

22 A. No.

23 Q. Or countywide?

24 A. Countywide, no.

25 Q. Yeah. So the county is overreaching in this



1 applying a regulated area to the Tonopah Egg Ranch be  
2 it does not typically reside in a regulated area?

3 A. Can you rephrase the question, please?

4 Q. The Tonopah Egg Ranch does not reside in a  
5 regulated area, correct?

6 A. It does not reside in a regulated area.

7 Q. Physically located. So, Mr. Sumner, have you  
8 ever considered the emissions from the Tonopah Egg Ranch  
9 to be normal farm cultural activity?

10 A. Yes.

11 Q. And what is a normal farm cultural activity?  
12 you define that?

13 A. I'd have to refer back to the rules to get the  
14 exact definitions, so it's probably there pretty close.

15 Q. I can help you.

16 A. Bet you could.

17 Q. Can you read for us what this is?

18 A. All agricultural activity by the owner, lease  
19 agent, independent contractor --

20 CHAIRMAN LEONARD: Mr. Sumner, just remind me  
21 to slow down.

22 A. "Normal farm cultural practice. All activities  
23 by the owner, lessee, agent, independent contractor or  
24 supplier conducted on any facility or production of crops  
25 or in nursery plants, disturbances of field surface or

1 by turning stalks, tilling, fertilizing or harvesting  
2 included in this definition."

3 Q. So as part of the property, there are fields  
4 the Tonopah Egg Ranch, so the fields would meet that  
5 definition?

6 A. Correct.

7 Q. Now, would the hen houses?

8 A. Not in this particular definition.

9 Q. So even though you stated that the normal fa  
10 cultural activity would apply, it doesn't meet the  
11 definition?

12 A. Not in this particular area. I'm trying to  
13 of the other -- it's defined in other places in the r  
14 I don't know if those are more expansive, so not off  
15 top of my head.

16 Q. This is an important point, so if you want t  
17 take some time to tell us what that is, I would appre  
18 it.

19 A. We may have to come back to that. I know we  
20 it defined other places other than this. What you ha  
21 provided me, just for the record, is Rule 310.

22 Q. Now, the permitting supervisor actually stat  
23 that he believed that the Tonopah Egg Ranch was not i  
24 regulated area and the BMP's would not apply?

25 A. Yes, and the context of that --

1 Q. A yes or no, thank you.

2 A. Yes.

3 Q. Thank you. You made a statement about ammon  
4 emissions. Can you also talk about, in the same vein  
5 PM-10 and the PM-2.5 and the VOC emission factors?

6 A. Right. I just know that those were -- one o  
7 them that showed a rate variation. I know there is a  
8 large variation on the other factors that have been  
9 developed also. I don't have the exact numbers on th  
10 but I know they have ranges on them in what is provid

11 Q. So that it is very possible that there might  
12 some difficulty in measuring ammonia but they might c  
13 over to measuring PM-10, PM-2.5 or VOC's?

14 A. Yes. If I remember correctly from some of t  
15 ranges that are there, the PM numbers have a substant  
16 range on those.

17 Q. Now, you also talked about the -- this India  
18 policy. You reached out and found this and that's no  
19 rule, right? I think it says right on there it's not  
20 rule?

21 A. Yep.

22 Q. Yeah. Did you research any other states?

23 A. We looked -- I am trying to think of other s  
24 we looked at recently. Even since this started, we l  
25 at a few more, looking at any of them that had specif

1 rules, and I did not see any that gave specific emiss  
2 factors for those.

3 Q. Did you find any states that actually are  
4 regulating animal feeding operations air-quality-wise

5 A. I think I saw one report where there are abo  
6 six states and most of those are regulating the H2 S1  
7 table that I saw.

8 Q. What about California?

9 A. I'm not sure what California is regulating.

10 Q. But could you have reached out to California  
11 you reached out to Indiana to find out?

12 A. Yes.

13 Q. Or Texas? Texas regulates issues of air qua  
14 permits for animal feeding operations. Did you talk  
15 Texas?

16 A. No.

17 Q. Idaho?

18 A. No.

19 Q. Ohio?

20 A. No.

21 Q. The interesting thing about Ohio is the Buck  
22 Farms, and I think you probably prepared by looking a  
23 that consent order and the news release.

24 A. Mm-hmm.

25 Q. Would you agree that in order for the EPA to

1 issued that consent order, they must have determined  
2 emissions factors are from those hen houses?

3 A. Yes, and I know that there are places where  
4 has been -- where that has been done but, again, our  
5 posture was that we're not there yet with the overall  
6 science and so we said those would continue to be loc  
7 at as fugitive emissions.

8 Q. But based on the EPA activity, they're ready  
9 act, right?

10 A. They don't seem like it, because I mentioned  
11 earlier they haven't provided any control technique  
12 guidances and documents; they haven't provided any ne  
13 source performance standards; haven't provided any MA  
14 standards. They haven't provided anything that they  
15 typically do to underwrite the regulation of differen  
16 types of industries.

17 Q. However, you're not limited to issuing perm  
18 just to those facilities? A source doesn't have to b  
19 categorized to receive a permit?

20 A. That is correct.

21 Q. All right. And if we go back to the Buckeye  
22 Farms, the EPA very clearly demonstrated that you can  
23 proceed and permit those facilities, and somehow, did  
24 reach out to the EPA for emission factors?

25 A. Yes, I believe we did talk to region nine or

1 so --

2 Q. And could you share that conversation?

3 A. Yeah, there was -- they didn't provide any  
4 additional guidance to us, and we provided information  
5 Hickman's. I believe that's in some of the records that  
6 that we have provided to Hickman's.

7 Q. And when did you do that?

8 A. I don't remember the date off the top of my head.

9 Q. When the initial permit or the minor permit process?

10 A. I think it was probably the minor permit process.

11 Q. I'd like to talk about fugitive emissions, and I think  
12 think both of us have cited to the Federal Register with  
13 the consent agreement for animal feeding operations, and  
14 in that agreement, and I'll paraphrase, the EPA had said  
15 that we're not going to make decisions on fugitive  
16 emissions at this time; we'll do that later.

17 So there's a range of fugitive emissions, right? Isn't  
18 isn't there? For instance, you can have a dust devil  
19 going across a vacant lot versus a power plant that has a  
20 stack, fugitive emissions versus non-fugitive emissions.  
21 would you agree with that?

22 A. I am not sure what I would be agreeing to.

23 Q. Give us an example of non-fugitive emissions.

24 A. Anything that goes -- you know, in this case, if  
25 we were looking at would be the engines that would go

1 through a stack so --

2 Q. The engines, the diesels go through a stack?

3 A. The diesel engines, yeah, they have a stack  
4 those.

5 Q. Oh, okay. And what would be -- not citing t  
6 hen houses, what would be a non-fugitive example, an  
7 extreme non-fugitive example?

8 A. Extreme?

9 Q. Sure.

10 A. I'm not sure I want to define what extreme -

11 Q. What about a wind blowing across a vacant lo  
12 that fugitive or non-fugitive.

13 A. It would be fugitive; that would be fugitive

14 Q. Okay. So we have a wind blowing across a va  
15 lot is fugitive and a stack from a diesel is non-fugi  
16 Now, when we start to move to the middle, does it get  
17 easier or harder to differentiate between fugitive an  
18 non-fugitive?

19 MR. SWAN: Before you answer that quest  
20 I'm questioning whether this line of questioning isn'  
21 beyond the scope of my direct examination of Mr. Sumr  
22 so I ask the Board to consider that.

23 CHAIRMAN LEONARD: Mr. Blackson, I don'  
24 want to put words in your mouth. You're asking the  
25 Department to provide examples of fugitive versus

1 non-fugitive events in relation to how they may or may not  
2 have applied that to the minor permit revision?

3 MR. BLACKSON: No, I'm not. I guess I'm  
4 trying to lay the groundwork that there's a range from  
5 fugitive to non-fugitive, and as you get to the middle  
6 ground, it's more difficult to sort out which is fugitive  
7 and non-fugitive. And I believe that's where the EPA is  
8 right now and that's why they have not given guidance.  
9 They have a very clear opinion of a hen house by the  
10 consent order at Buckeye.

11 CHAIRMAN LEONARD: With respect then to  
12 Department's objection, I'll overrule that. I believe  
13 that Mr. Sumner has already discussed this, and so agree  
14 understanding that we're talking about cross, just try to  
15 make the point.

16 Mr. Sumner, answer as you deem appropriate.  
17 Please proceed.

18 You can ask the question just as you did  
19 before.

20 MR. BLACKSON: I'd like to gather myself  
21 a second. And it might help if the court reporter could  
22 help me out.

23 (The record was read by the reporter.)  
24 BY MR. BLACKSON:

25 Q. So is it more difficult, as you get to the middle



1 of non-fugitive and fugitive, to differentiate which  
2 which?

3 A. Yes.

4 Q. So would you say, yes or no, that it's possible  
5 that EPA hasn't issued guidance because that middle  
6 ground, perhaps where you have an animal in a covered  
7 corral, that you don't know whether that's fugitive or  
8 non-fugitive yet?

9 A. Correct. It can be difficult to define.

10 Q. It can, but if we look at the EPA actions such as  
11 the Buckeye Farms, it's clear that the EPA, since they  
12 issued a consent order believe that the emissions from  
13 those hen houses were non-fugitive?

14 A. Yeah, it was clear in that situation.

15 Q. All right. Thank you. I would like to talk  
16 about vents then, and we've both cited the statute about  
17 buildings and vents and functional openings, and you  
18 a very good point that the opening at the Hickman hen  
19 house is very large, right?

20 A. Mm-hmm.

21 Q. So if you start to shrink it down, when does  
22 opening become a vent?

23 A. That would just be part of the judgment that  
24 would employ in making that determination. There's no  
25 hard-and-fast number which is why some are regulated

1 some places and some are not regulated in others beca  
2 there is -- there is a spectrum there.

3 Q. Is there any regulatory basis for saying wha  
4 size of the vent is or is not?

5 A. I think the modifier at the beginning of the  
6 definitions is reasonable, what is reasonable.

7 Q. What about a functional opening? How large  
8 functional opening be?

9 A. That's also a term of art to be determined o  
10 what that would be.

11 Q. So it's just as reasonable to say that that  
12 opening is a vent as it's not a vent, versus one pers  
13 and another?

14 A. Correct.

15 Q. And so I'm not sure if I'll be allowed to do  
16 this, but a comparison of another facility that you  
17 permitted that doesn't have an opening like that, so  
18 are vents? If the design was different, there could  
19 vent in that building then, in your opinion?

20 A. Yeah. We're going to look at every situatio  
21 individually.

22 Q. But again, when we look at the EPA and their  
23 actions with Buckeye Farms, they clearly decided that  
24 whatever opening is in a hen house is a vent and they  
25 issued that consent order according to that. Would y

1 agree with that?

2 A. Yes.

3 Q. So somehow there has to be some ultimate  
4 determination of the size of the vent in a functional  
5 opening?

6 A. I think we would both agree on that one.

7 Q. Actually not. An opening is an opening; a  
8 functional opening is a functional opening, so we pro  
9 would not agree, no matter how large or how small. S  
10 if I'm testifying. I don't mean to do that so I'll s

11 So, Mr. Sumner, you said you got pretty  
12 involved with this minor permit modification. So can  
13 describe where these fans are in the building and wha  
14 they do and maybe how big they are?

15 A. As I understand, the fans are probably, what  
16 about three quarters of the way through the building,  
17 toward the east end and they're there to blow through  
18 manure piles as they come off of the -- when the manu  
19 comes off of the conveyer belts, be able to dry those  
20 and to reduce the moisture in those.

21 Q. Are the fans pulling air across the hens the

22 A. Right. They are blowing from west to east.

23 Q. And where are the hens?

24 A. They're behind those on the east side on the  
25 various levels, on the west of the fans.

1 Q. And then the manure piles are on the east side

2 A. East side of the fans.

3 Q. And the fans are blowing across that. Is that  
4 particulate matter being picked up by that ventilation  
5 blown out of the building?

6 A. Yes, there is.

7 Q. And what is the purpose of those fans? Can  
8 say?

9 A. Yeah, my understanding is to dry the manure  
10 to make those really -- as I understand, to reduce and  
11 the emissions from those.

12 Q. Do they serve a purpose for the birds?

13 A. The fans?

14 Q. The fans, yes, sir.

15 A. Yes. They're also to keep the birds cool when  
16 is the purpose of the emergency generators that they  
17 there as part of the process, so in case the power goes  
18 down, the emergency generators are there to make sure  
19 the birds will stay cool.

20 Q. Do those fans also remove pollutants, NSR  
21 pollutants?

22 A. Yes, they would move pollutants across there.

23 Q. So the fans would bring in fresh air and through  
24 forced ventilation remove the pollutants?

25 A. They would bring in fresh air through the we

1 open end of the building out through the -- for the m  
2 part, opened east end of the building.

3 Q. Are the hen houses stationary sources?

4 A. We would not consider those to be stationary  
5 sources.

6 Q. And why would they not be stationary sources?

7 A. Because of the fugitive emissions from those

8 Q. Fugitive emissions in the definition of a  
9 stationary source?

10 A. I'd have to go back and look again.

11 Q. Let's do that. I think that would be in  
12 Rule 100.

13 A. Yeah, let's go ahead and look at it. I'm not  
14 seeing the definition of stationary source in what you  
15 handed me there. I see a major source but I don't see  
16 the stationary source.

17 Q. Actually, we might have to go to the CFR 51.

18 CHAIRMAN LEONARD: For the interest of  
19 expediting this, I believe you're looking for Rule 100  
20 section 200.105, page 29.

21 MR. BLACKSON: All right. Thank you.  
22 in Rule 100.

23 THE WITNESS: All right. So Rule 100,  
24 200.105, "Stationary source. Any source that operates  
25 a fixed location and that emits or generates regulated

1 pollutants."

2 BY MR. BLACKSON:

3 Q. Are the hen houses in Tonopah Egg Ranch  
4 stationary sources?

5 A. Yes, they would be stationary sources.

6 Q. Thank you. You had commented earlier that t  
7 actually was an assessment of the applicability of th  
8 requirements of Rule 241 as part of the process. Is  
9 documented?

10 A. We did not document that, as we just looked  
11 saw that the emissions were below the thresholds that  
12 looked at with regard to the point sources; that they  
13 below the thresholds so therefore it was obvious that  
14 didn't document that in the TSD.

15 Q. Is that a normal practice?

16 A. Pretty much.

17 Q. So how would you show compliance with your  
18 permitting process through your rule if you don't doc  
19 it? For example, you have a checklist for completene  
20 Why would you not document an assessment of applicabi

21 A. We would just be looking at the emissions.  
22 are below 25 tons so that, again, it's one of those t  
23 where it's obvious that it would not require any furt  
24 discussion so they would be below any of the threshol

25 Q. But how would you ever demonstrate it?

1           A.     By the amount of emissions that are listed in  
2 tables in the TSD.

3                   MR. BLACKSON: I'm done. Thank you.

4                   CHAIRMAN LEONARD: All right.

5                   MR. SWAN: I have a couple questions on  
6 redirect.

7                   CHAIRMAN LEONARD: Mr. Swan, you're up  
8 redirect.

9  
10                                   EXAMINATION

11 BY MR. SWAN:

12           Q.     Okay. Mr. Sumner, EPA is the governing body  
13 this type of activity, so why would you have reached  
14 to other states to see what they are doing in this area?

15           A.     Right. EPA is where we take our ultimate  
16 guidance from and look for ultimate guidance. Sometimes  
17 it's valuable to see what other states may or may not  
18 doing.

19           Q.     Okay. But it's -- is it for precedent? Is  
20 establish what regulations would govern the activity  
21 it just to see what others are doing in the area, given  
22 the fact that EPA has not nailed down its opinion and  
23 issued regulations in this area?

24           A.     Yeah, whenever it's an area like this that is  
25 flux. I think it's well established here today that

1 is a developing area, so we're trying to see kind of  
2 what's out there, what are other people doing.

3 Q. But it's not required looking at other state  
4 It's informative, but not required?

5 A. Right, that's correct.

6 Q. I'm looking at ARS -- two sections of ARS 49  
7 the first is P5(a) and if I can just read that small  
8 paragraph to you. I have a question for you about it.  
9 5(a) says "Commercial farming practices that may produce  
10 PM-10 particulate emissions within the regulated area  
11 including activities of a dairy, a beef cattle feed lot,  
12 poultry facility and a swine facility." I forgot to read  
13 above it. "Regulated agricultural activities means",  
14 then it leads into commercial farming practices. It  
15 specifically mentions poultry facilities. Is that what  
16 the Department found the exemption for hen houses?

17 A. Correct, yeah, when we looked at all the  
18 different farm type operations and that is the basis  
19 that; that would be in that definition.

20 Q. The other provision of 49-457 is subsection  
21 which reads as follows: "The regulation of PM-10  
22 particulate emissions produced by regulated agricultural  
23 activities is a matter of statewide concern. According to  
24 this section preempts further regulation of regulated  
25 agricultural activities by a county, city, town or other



1 political subdivision of this state."

2 Does this not mean the county is expres  
3 prohibited from regulating emissions from hen houses  
4 is an agricultural activity? Is that your interpreta  
5 of that?

6 A. That was my interpretation when I talked abo  
7 statewide concern earlier, yes.

8 MR. SWAN: We have no further questions

9 MR. BLACKSON: May I follow up?

10 CHAIRMAN LEONARD: Let's go ahead with  
11 questions and then we'll take a break.

12  
13 EXAMINATION

14 BY MR. BLACKSON:

15 Q. Again, is the Tonopah Egg Ranch physically  
16 located in a regulated area?

17 A. No.

18 Q. The regulated activity includes the definiti  
19 a regulated area? Let me borrow --

20 MR. SWAN: Mr. Chairman, I am questioni  
21 whether these questions have already been asked and  
22 answered. I don't know what your recollection is but  
23 seems to me that's the case.

24 CHAIRMAN LEONARD: I don't necessarily  
25 disagree, but given the limited number of questions I

1 think Mr. Blackson has, we're going to go ahead and ask  
2 him to ask those questions.

3 BY MR. BLACKSON:

4 Q. The definition of regulated cultural --  
5 agricultural activity. In order to perform a regulated  
6 agricultural activity, you must be in a regulated area  
7 that correct? And I will give this back to you.

8 A. Correct, that's the definition of a regulated  
9 area, yes.

10 Q. Now, you talked about an exemption from the  
11 agricultural process. Are you familiar with, in my  
12 pre-hearing disclosure, where the EPA sued California  
13 because they exempted animal feeding operations?

14 A. I am familiar with that.

15 Q. Do you believe that could happen here because  
16 the exemption that you're saying exists statewide and  
17 countywide for animal feeding operations?

18 A. I believe that could exist here. It would be  
19 speculative but by the same token it hasn't so --

20 Q. So --

21 MR. SWAN: It seems to me to be beyond  
22 scope of direct.

23 CHAIRMAN LEONARD: Remember on redirect  
24 Blackson, it's got to be about questions that you may  
25 already asked or things that you may have learned from

1 Swan. So I understand where you're trying to go, but  
2 got to bring it back to where we're at.

3 MR. BLACKSON: One more question.

4 BY MR. BLACKSON:

5 Q. You said that you did not go to the EPA but  
6 went to Indiana. So why would you go to Indiana and  
7 the EPA?

8 A. We -- I think you had said -- I don't know h  
9 you define going to Indiana. We just looked at  
10 literature. We didn't talk to anyone directly. In t  
11 end, we just looked at literature available. We did  
12 speak to anyone directly.

13 Q. And you did not speak to anybody directly at  
14 EPA?

15 A. Yeah, I believe we did.

16 Q. Can you share the conversations?

17 A. Yeah. You know, again, I don't remember the  
18 details of it and I don't have any particular notes o  
19 anything from that conversation, but we just discusse  
20 what -- with the EPA what was going on with that site  
21 you know, any guidance that they have and they had no  
22 guidance for us so --

23 Q. Can you say who you talked to?

24 A. Eugene Shin (phonetic).

25 MR. BLACKSON: We've seen e-mails on th

1 Thank you.

2 CHAIRMAN LEONARD: All right. Given the  
3 interest of time, we do have some closing discussions  
4 potentially as well as then there might be some questions  
5 but --

6 MR. BLACKSON: I will be short.

7 CHAIRMAN LEONARD: Mr. Swan?

8 MR. SWAN: I just have a short paragraph.

9 CHAIRMAN LEONARD: All right. Mr. Blackson,  
10 if you'd like to go ahead and give your closing.

11 Hold on just a second. I can guarantee  
12 I think we're going to have questions that we'll ask  
13 ourselves as we go through, but at this point, we don't  
14 have questions for Mr. Blackson or Mr. Swan.

15 So, Mr. Blackson, if you'd go ahead and  
16 proceed with your closing and then we'll allow Mr. Swan.

17 MR. BLACKSON: Yes. I'd just like to state  
18 that somebody has to decide if the county, Maricopa County  
19 Air Quality Department, will be allowed to continue to  
20 mischaracterize animal feeding operations as a major  
21 source for non-fugitive emissions. I believe you have  
22 authority to stop this arbitrary behavior, and I ask  
23 you decide in our favor. Thank you.

24 CHAIRMAN LEONARD: Thank you.

25 MR. SWAN: The Department has shown that

1 have a very narrow scope of authority with regard to  
2 type of an action, and Mr. Blackson's appeal is whether  
3 not the director's action in approving the minor permit  
4 revision was inappropriate. That's all we're looking  
5 so it is really very narrow.

6 Our evidence has shown that we properly  
7 calculated and characterized the emissions. The decisions  
8 we made were not arbitrary. We acted reasonably and  
9 lawfully in performing the analysis of the minor permit  
10 revision application and the Department's decisions were  
11 based upon clear technical judgment.

12 Two other points. Whether other states  
13 chosen to regulate these operations without credible  
14 evidence from the EPA does not mean that we must follow  
15 their lead, and the Department's decision to wait for  
16 EPA to issue regulation is evidence of a consistent  
17 reasonable analysis. For all of the foregoing reasons  
18 the Board should confirm the director's decision to issue  
19 the minor permit modification. Thank you.

20 CHAIRMAN LEONARD: Thank you, gentlemen.  
21 very much. I'll conclude this portion of the hearing.  
22 I have a sneaking suspicion that the Board is going to  
23 take some additional time, so I would propose setting another  
24 meeting date to discuss in executive session some of  
25 we've heard together, and hopefully at that same hearing.

1 potentially come out with at least what we believe our  
2 decision is. So at this point, I'd like to stop the  
3 hearing now. I would like to take a five-minute break  
4 then we'll come back for public comment.

5 So at this point, the court reporter can  
6 done at the conclusion of my statements and, Mr. Black  
7 and Mr. Swan, your group are free to stay. Obviously  
8 you're free to go but we will coordinate our schedules  
9 your schedules to get that scheduled up.

10 MR. SWAN: Would we be involved -- if in  
11 executive session, would we be involved in your next  
12 meeting? It sounds like deliberations without us but  
13 asking for clarification.

14 MR. HISER: It's a complex question, Mr.  
15 Swan. Under the Arizona open meetings law, while we  
16 discuss in executive session certain aspects and questions  
17 that they may have for counsel for guidance, the actual  
18 deliberations of the Board are public activity. So the  
19 deliberation portion would be open to the public and  
20 that's why we will coordinate to make sure, as a court  
21 to the two parties and anybody else who sat through the  
22 hearing that would like to hear when that would be.

23 MR. SWAN: Okay. I appreciate the  
24 explanation. Thank you.

25 CHAIRMAN LEONARD: Again, it goes without

1 stating that one of the things this hearing Board is  
2 tasked with doing is making sure that the public has  
3 opportunity to understand where we're coming from, both  
4 individually and as a Board; if for no other reason,  
5 Blackson has put in a tremendous amount of effort, as  
6 as has the Department. At that point, we will be  
7 scheduling another hearing or another meeting date.

8 At this point, our court reporter, you  
9 officially done.

10 (The hearing concluded at 4:55 p.m.)  
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25

1 STATE OF ARIZONA } SS.

2 COUNTY OF MARICOPA }

3 BE IT KNOWN that the foregoing proceedings  
4 taken before me; that the witness before testifying w  
5 duly sworn by me to testify to the whole truth; that  
6 foregoing pages are a full, true and accurate record  
7 the proceedings, all done to the best of my skill and  
8 ability; that the proceedings were taken down by me i  
9 shorthand and thereafter reduced to print under my  
10 direction.

11 I CERTIFY that I am in no way related to an  
12 the parties hereto nor am I in any way interested in  
13 outcome hereof.

14 [ ] Review and signature was requested.  
15 [ ] Review and signature was waived.  
16 [X] Review and signature not required.

17 I CERTIFY that I have complied with the eth  
18 obligations set forth in ACJA 7-206(F)(3) and ACJA 7-  
19 J(1)(g)(1) and (2).

20 Dated at Phoenix, Arizona, this 22nd day of  
21 November, 2016.

22 LAURA A. ASHBROOK, RMR  
23 Certified Reporter  
24 Arizona CR No. 50360

25 \* \* \*

26 I CERTIFY that GRIFFIN & ASSOCIATES, LLC, h  
27 complied with the ethical obligations set forth in AC  
28 7-206 (J) (1) (g) (1) through (6).

29 GRIFFIN & ASSOCIATES, LLC  
30 Arizona RRF No. R1005